TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 281.

THE STEAMBOAT BRIDGEPORT, HER TACKLE, ETC., CHARLES WEEKS AND ROBERT HAYDOCK, CLAIMANTS, APPELLANTS,

vs.

GEORGE SHAW AND DAVID SHAW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED NOVEMBER 5, 1870.

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1 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Charles W. Newton, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 31st day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] CHA'S W. NEWTON, *Clerk.*

2 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 21st day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[L. S.] SAMUEL T. JONES, *Clerk.*

3 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the 25th day of October, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Honorable Charles L. Benedict, district judge.

GEORGE SHAW ET AL.
vs.
THE STEAMBOAT "BRIDGEPORT," HER TACKLE, &C.

The libellants appear and file their libel against the above-named vessel in the words & figures following, to wit:

4 To the Honorable Cha's L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel and complaint of George Shaw and David Shaw, of Montreal, in Canada, against The Steamboat Bridgeport, her engines, boilers, tackles, apparel, and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maratime, alleges as follows:

First. That on the fourth day of September last, the libellants were, and they still are, owners and proprietors of the ship or vessel called the Margaret Evans; that the said ship had lately arrived in the port of New York, after a voyage from Leghorn, and was lying in the East River, moored to the wharf at Corlear's Hook, in the city of New York.

Second. That on the said fourth day of September last, between the hours of one & four in the morning, the said steamboat Bridgeport was proceeding on her voyage from Bridgeport, in the State of Connecticut, to her

usual pier at the foot of Peck slip, in the said city of New York, having, as libellants are informed and believe, her full head of steam, and going at full speed, when, through the carelessness and mismanagement
5 of her officers & crew, or those having charge and direction of her, she was driven with great force and violence against the said ship, Margaret Evans, striking her on the starboard side, just abaft the fore-rigging, cutting in her deck beams, water-ways, and planking, and driving her with such force against the wharf to which she was moored, damaging thereby the port side, straining her throughout, and causing her to sink almost immediately; that the said collision was occasioned by the mismanagement, inattention, or want of proper look-out on the part of said steamboat, her master and crew, and not from any fault, omission, or neglect, on the part of said Margaret Evans, or of those having her in charge.

Third. That the said ship, Margaret Evans, was so much injured and disabled by the force with which she was struck by the said steamboat, as to render it necessary to take her into a dry-dock for repairs; that at the time of such collision, she was under charter for a voyage to Philadelphia, and thence to Antwerp, but by reason of the delay necessarily incurred in repairing her damages, the charterers refused to be bound by their contract, and libellants lost their freight they would have earned on such a voyage.

Fourth. The libellants further allege, that their damages, including loss of use of said ship during the time occupied in repairs, amount to the sum of seventeen thousand three hundred & eighteen dollars, inclusive of interest.

6 Fifth. That since said collision, the libellants, through their agents in the city of New York, have applied to the agent of said steamboat, to repair the said damages, and said agent at first consented to make such repairs, but neglected and afterwards refused to make them; and your libellants were thereupon compelled to make such repairs themselves, and after such repairs had been made, libellants again requested the agent of said steamboat to pay the expense thereof, but the said agent has neglected & refused so to do, and the same still remains due and unpaid to your libellants.

Sixth. That said steamboat Bridgeport is now lying in the port of New York, and within the jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat Bridgeport, her engines, boilers, tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other & further relief as they may be entitled to in the premises.

D. D. LORD,
Proc. for Libellants.

7 EASTERN DISTRICT OF NEW YORK, *ss:*

James Edmeston being duly sworn, saith that he is, in fact, of libellants, who reside in Montreal, in Canada, and are now absent from this State, & consequently unable to make this affidavit. Deponent further saith that he has read the foregoing libel, and knows the contents thereof, and that the same is true of his knowledge, except as to

such matters as are therein set forth *in* information and belief, and that as to such matters, he believes the same to be true.

JAMES E. ADAMS.

Sworn to before me this 22nd day of October, 1865.

SAMUEL T. JONES,
U. S. Commissioner.

(Indorsed:) U. S. dist. court, eastern dist. of New York. Geo. Shaw et al. vs. The Steamboat Bridgeport. Libel. D. D. Lord, proctors libellants. Filed Oct. 25, 1865. S. T. Jones, clerk.

8 *Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 23d day of October*, 1865.

District court of the United States for the eastern district of New York.

Whereas, a libel was filed in this court on the 25th day of October, in the year of our Lord one thousand eight hundred and sixty-five, by George Shaw and David Shaw, libellants, against The Steamboat "Bridgeport," her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her engines, &c., may be condemned to pay the claim of the libellants, and the said libellants and James Edmiston, and Archibald Montgomery, sureties, parties hereto, hereby consenting, and agreeing that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellant above named, shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

G. & D. SHAW,
By JAMES EDMISTON, *Att'y.*
ARCH. MONTGOMERY.
JAMES EDMISTON.

Taken and acknowledged this 25th day of October, 1865, before me.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

James Edmiston and Archibald Montgomery, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, and State of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JAMES EDMISTON.
ARCH'D MONTGOMERY.

Sworn to this 25th day of October, A. D. 1865, before me.

SAMUEL T. JONES,
U. S. Commissioner.

Recorded the 25th day of October, 1865.

SAMUEL T. JONES, *Clerk.*

9 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas, a libel in rem and personam hath been filed in the district court of the United States for the eastern district of New York, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five, by George Shaw & David Shaw, libellants, against The Steamboat "Bridgeport," her engines, machinery, tackle, &c., in a cause of collision, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are, therefore, hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the eighth day of November, 1865, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, & then and there to interpose a claim for the same, and to make their allegations in that behalf.

Witness the Honorable Charles L. Benedict, judge of said court, this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

SAMUEL T. JONES, *Clerk.*

D. D. LORD,
Proctor for Lib'l'ts.

[Cancelled 50-c. stamp.]

(Indorsed:)

10 Vol. ——, page ——. Eastern district of New York, United States district court. George Shaw & o'rs vs. The Steamboat Bridgeport, &c. Process in rem and personam. Ret'ble November 8th, 1865. D. D. Lord, proctor for libellant. Filed November 8th, 1865.

I hereby depute J. H. Higgins to execute the within process.
Dated November 1st, 1865.

A. F. CAMPBELL, *U. S. Marshal.*

In obedience to the within monition, I attached the steamboat Bridgeport therein described, on the 1st of November, and have given due notice to all persons claiming the same, that this court will, on the 8th day of November, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

A. F. CAMPBELL,
U. S. Marshal.

Dated Nov. 8th, 1865.

11 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Wednesday, the eighth day of November, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Charles L. Benedict, district judge.

GEORGE SHAW & O'RS
vs.
THE STEAMBOAT BRIDGEPORT, &C.

On reading and filing the mandate of the district judge, and on motion of Daniel D. Lord, esq., proctor for the libellant, it is ordered, that the notice for all persons to appear and intervene, for their interest in the above-entitled cause, be published by the marshal until the 15th day of November.

By the court:

SAMUEL T. JONES, *Clerk.*

12 In pursuance of the within orders I have given the notice as therein directed.

Dated Nov. 15, 1865.

A. F. CAMPBELL, *Marshal.*

(Indorsed:) Vol.—, No.—. United States district court for the eastern district of New York. George Shaw & o'rs vs. The Steamboat Bridgeport, &c., &c. Order for short publication. Filed and day of 186 .

13 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the 18th day of November, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Charles L. Benedict, district judge.

THE STEAMBOAT BRIDGEPORT, &C.
ads.
GEORGE SHAW ET AL.

And now, Charles Weeks & Robert Haydock, owners of the steamboat Bridgeport, &c., intervening for the interest of themselves in the said steamboat, appears before the honorable court and makes claim to to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of George Shaw et al. and the said Charles Weeks & Robert Haydock, aver that they were in possession of the said steamboat at the time of the attachment thereof, and that the person above-named are the true and bona fide owner of the said steamboat, and that no other person is the owner thereof; wherefore, they pray to defend accordingly.

ROBERT HAYDOCK.
CHA'S WEEKS,
By ROB'T HAYDOCK.

OWEN, GRAY & OWEN,
Proctors for Claimant.

Affirmed to and subscribed this 18th day of November, A. D. 1865, before me, by Robert Haydock.

CHA'S W. NEWTON,
U. S. Commissioner.

14 (Indorsed:) Vol.—, No.—. United States district court for the eastern district of New York. The Steamboat Bridgeport ads. George Shaw et al. Owen, Gray & Owen, proctors for claimant. Claim of owner. Filed the 18th day of November, 1865. S. T. Jones, clerk.

15 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 18th day of November, 1865.*

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the day of , in the year of our Lord one thousand eight hundred and sixty-five, by George Shaw et al., against The Steamboat Bridgeport, &c., for the reasons and causes in the said libel mentioned, and praying that steamboat may be condemned & sold, and the parties hereto hereby consenting that in case of default or contumacy on the part of the respondents, or their surety, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by Cha's Weeks & Robert Haydock:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or, upon an appeal, by the appellate court.

ROB'T HAYDOCK.
CHA'S WEEKS,
By ROB'T HAYDOCK.
CHARLES A. MACY.

Taken and acknowledged this 18th day of November, 1865, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Charles A. Macy, of city of New York, party to the above stipulation, being duly affirmed, doth depose and say, that he resides in the city of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

CHARLES A. MACY.

Affirmed to this 18th day of November, 1865, before me.
CHA'S W. NEWTON,
U. S. Commissioner.

Recorded the 18th day of November, 1865.
SAMUEL T. JONES, *Clerk.*

16 District court of the United States of America for the eastern district of New York.

[Filed the 20th day of January, 1866.]

Know all men by these presents that we, Charles Weeks, Robert Haydock, R. Cornell White, and Walter E. Lawton, are held and firmly bound unto Anthony F. Campbell, marshal of the United States for the eastern district of New York, in the sum of twenty-eight thousand and six hundred thirty-six dollars, to be paid to the said Anthony F. Campbell, for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas a libel has been filed in the district court of the United States for the eastern district of New York, on the 25th day of October, in the year of our Lord one thousand eight hundred and sixty-five, by George Shaw and David Shaw, libellants, against The Steamboat Bridgeport, &c., for the sum of fourteen thousand and three hundred & eighteen dollars, on which process of attachment has issued, and the said steamer is in custody of the marshal under the said attachment, and Charles Weeks & Robert Haydock has applied for a discharge of said steamer from the custody of the marshal, and has filed a claim claiming the said steamer as owners, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above-bounden Charles Weeks, Robert Haydock, R. Cornell White, and Walter E. Lawton shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES WEEKS.
ROBERT HAYDOCK.
GEORGE W. CORLIES, *Ag't.*
R. CORNELL WHITE.
WALTER E. LAWTON.

Sealed and delivered and taken and acknowledged this 19 day of January, 186 , before me.

CHA'S W. NEWTON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Eastern District of New York, City of Brooklyn, ss:

R. Cornell White & Walter Lawton, being duly sworn, each depose and say that they reside in the city of Brooklyn; that they are worth the sum of fifty-seven thousand two hundred seventy-two dollars, over and above all his just debts and liabilities.

R. CORNELL WHITE.
WALTER E. LAWTON.

Sworn to this 19th day of January, A. D. 1866, before me,
CHA'S W. NEWTON,
U. S. Com.

I approve of the sufficiency of the sureties to the within bond. Dated this 20th day of January, 1866.

Recorded the 20th day of January, 1866.

SAMUEL T. JONES, *Clerk.*

17 U. S. district court.

THE STEAMBOAT BRIDGEPORT, &C. } *ads.* GEORGE SHAW ET AL. }

Walter E. Lawton, being duly sworn, says: I reside in the city of Brooklyn. The bond being shown me I executed on the day it bears date. I own no real estate in Brooklyn or New York cities. I own real estate in Queens Co., & also in Herkimer & Lewis counties. I also own United States stocks—about $9,000 bonds—& other personal obligations. The lots are in Nicholls, Queens Co. I paid $4,450 for them, and they are worth seven or eight thousand now. I own half of them. There is no encumbrance on those in Queens Co. The lots in Herkimer Co. are about 12 miles from Lewtle. They belong to our firm. I own half of them. There are nine thousand acres, worth $9 per acre, and I own half of them. It is mortgaged for $8,000. These lots are in Herkimer and Lewis Co. I consider myself worth half a million of dollars.

WALTER E. LEWTON.

Sworn before me this 20th , 1866.

CHARLES W. NEWTON,
U. S. Com'r.

18 R. Cornell White, being duly sworn, says: I reside at No. 120 Columbia st., Brooklyn. I own my house where I reside. My house and lot is worth $25,000, incumbered for $9,000. I own a store, No. 71 John st., New York; it is worth $28,000. Incumbrance mortgage for $12,500. I own no other real estate in this State. I own an undivided interest in almost every other State in the Union, principally in Wisconsin, Iowa, Min'esota. I consider myself worth $250,000.

R. CORNELL WHITE.

Sworn before me this 20th , 1866.

CHA'S W. NEWTON,
U. S. Com.

19 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the 20th day of January, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Charles L. Benedict, district judge.

THE STEAMBOAT BRIDGEPORT } *ads.* GEORGE SHAW ET AL. }

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge, on motion of Owen, Gray & Owen, proctors for

the claimant, it is ordered that the appearance of the claimant be, and the same is, hereby entered, and that a copy of this order be delivered to the marshal.

CHA'S L. BENEDICT.

20 (Indorsed:) Vol.—, No.—. United States district court for the eastern district of New York. The Steamboat Bridgeport ads. George Shaw et al. Owen, Gray & Owen, proctors for cl't. Order to marshal. Filed the 20th day of January, 1866.

21 U. S. district court.

GEORGE SHAW & DAVID SHAW
ag'st
THE STEAMBOAT BRIDGEPORT, HER TACKLE, &C.

We consent that the libel in this cause may be amended by adding three thousand dollars to the damages alleged to have been sustained by reason of the collision therein mentioned.

New York, 7 Oct., 1867.

OWEN, NASH & GREY.

(Endorsed:) U. S. district court. George Shaw & David Shaw ag'st Steamboat Bridgeport. Consent to amend libel. D. D. Lord, proc. for lib't's. Filed October 11, 1867.

22 U. S. district court, eastern district of New York.

THE STEAMBOAT BRIDGEPORT, HER TACKLE, &C.,
Charles Weeks & Rob't Haydock, claimants,
ads.
GEORGE SHAW & DAVID SHAW.
} Answer.

The answer of Charles Weeks and Rob't Haydock, owners of the steamboat "Bridgeport," her engines, tackles, &c., intervening for their interest therein to the libel and complaint of the above-named libellants, respectfully show to this court, as follows:

First. They have no knowledge of the matters contained in the first article of the libel, and therefore deny the same.

Second. They admit that a collision did occur between the steamboat Bridgeport an the ship Margaret Evans, at or about the time & place stated in the second article, but they deny each and every other allegation contained in that article.

Third. They have no knowledge of, and therefore deny, the several matters contained in the third article of said libel.

Fourth. They have no knowledge of, & therefore deny, the allegations contained in the fourth article of the said libel.

Fifth. They have no knowledge of, and therefore deny, the allegations contained in the fifth article of said libel.

Sixth. The claimants say that the steamboat "Bridgeport" has for many years past run upon regular trips between the city of New York and Bridgeport, in the State of Connecticut, and carries freight and
23 passengers; that on the occasion of the said collision she was on one of her regular trips from Bridgeport to New York, and had freight & passengers aboard, and was in all respects well officered, man-

ned, & equipped, having competent pilot in charge of her, and a good and sufficient look-out attending to his duty, and the engine & machinery in proper order and under proper control; that when above Corlear's Hook, a fog suddenly and unexpectedly came on, which rendered navigation exceedingly difficult; that the night was such that, with the fog, it became and was almost impossible to navigate the steamboat with any certainty as to course; that there was no proper place to anchor, and the master was obliged to keep on; that the steamboat was immediately slowed down as far as possible and have steerage-way, and the fog-whistle was sounded at intervals of less than a minute, and all hands were at their place, the look-out on duty forward, and the master and pilot in the pilot-house; that the tide was flood, with a strong current against the steamboat, and she was proceeding and with the utmost caution when the ship was discovered directly ahead, and but a short distance off; that the engine was immediately reversed and backed, and every effort made which could have been under the circumstances, to avoid the collision, but to no effect; that the ship was improperly lying without any lights set or burning, and without any competent watch or ship-keeper to take care of her; that if there had been any light upon the said ship, or any competent person to have given
24 timely notice of the position of the ship and the danger, the steamboat could have avoided the collision, and the claimants insist that the ship was in fault in these respects; that so far as respects the steamboat, the collision arose from an inevitable and unavoidable accident, without any fault or negligence on her part, and they deny the several allegations of the libel in any wise to the contrary.

All which the claimants are ready to aver and prove, and they accordingly pray that the libel may be dismissed with costs.

GEORGE W. CORLIES.

OWEN, GRAY & OWEN,
Claimants' Pro's.

Sworn before me this 20th day of November, 1865, by George W. Corlies, agent for said claimants.

JOEL B. ERHARDT,
Not. Public, New York.

(Endorsed:) U. S. district court, eastern dist. The Steamboat Bridgeport, &c. ads. George Shaw, & al. Answer. Owen, Gray & Owen, claimants' proctors. Filed November 22nd, 1865. Samuel T. Jones, clerk.

25 U. S. district court.

STEAMER BRIDGEPORT, &C., *ads.* GEORGE SHAW, E. AL.

We hereby consent that Owen, Nash & Gray, esq'r's, be substituted in our place as proctors for the claimants in the above-entitled action, and that an order to that effect be entered.

Dated New York, September 15, 1867.

OWEN, GRAY & OWEN,
Proc's for Cl'ts.

At a stated term of the district court of the United States held in

& for the eastern district of New York, in the city of Brooklyn, at the court-rooms, on the 2nd day of October, 1867:

Present, Hon. Cha's L. Benedict, justice.

STEAMER BRIDGEPORT, &C., *ads.* GEO. SHAW AND DAVID SHAW.

On reading and filing the consent of Owen, Gray & Owen, esq'r's, proctors for the claimants in the above-entitled action, and on motion of Owen, Nash & Gray, it is ordered that Owen, Nash & Gray be,
26 and they hereby are, substituted proctors for the claimants in the above-entitled action, in the place of Owen, Gray & Owen.

By the court:

SAMUEL T. JONES, *Clerk.*

(Indorsed:) U. S. dist. court, E. D. Steamboat Bridgeport ads. George Shaw & al. Consent & order for substitution of att'ys. Owen, Nash & Gray, proctors for cl'm'ts. Filed Oct. 2nd, 1867.

27 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United State court-rooms, in the city of Brooklyn, on , the 16th day of April, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Charles L. Benedict, district judge.

GEORGE SHAW ET AL. *vs.* THE STEAMBOAT "BRIDGEPORT," HER tackle, &c.

Cause called on for trial; Daniel D. Lord, esq., appears for libellants; Messrs. Owen, Gray & Owen, for cl'm'ts & resp'd'ts. Both parties answer ready, and the court orders that the trial proceed.

Mr. Lord reads libel; Mr. Owen reads answer.

Witnesses for lib'l'ts:

Lawrence O. Hagan	Dep. read.
Robert Robinson	" "
Alix Lander	Sworn and examined.
James Burns	" " "
Rowland W. Griffiths	" " "

The lib'l'ts rest their case.

Claimants' witnesses:

Jay L. Clark	Sworn and examined.
Edward Smith	" " "
Cornelius Donnelly	" " "
Frederick Raymond	" " "
Jay L. Clark	Recalled "
Thomas J. Sliney	Sworn "

Cl'm'ts rest their case.

Lib'l'ts' witnesses:

Franklin Boyd	Sworn & examined.
28 James Furman	Sworn & examined.
Rowland N. Griffiths	Recalled "

Lib'l'ts rest.

Cl'm'ts' witnesses:

Ezra Quinby..... Sworn & examined.

Testimony closed—claimants to have the right to take deposition of Jay L. Clark, if they desire, and to introduce same before the cause is summoned up.

Hearing adj'd to April 25, 1866.

The arguments of counsel for the respective parties are heard. The depositions of Hogan & Robinson, witness for lib'l'ts, and filed by lib'l't, and points are submitted by counsel. The court takes the papers & reserved its decision.

(Indorsed:) Vol. —, No. —. United States district court for the eastern district of New York. George Shaw et al. vs. The Steamboat Bridgeport, her tackle, &c. Extract from minutes. ——— ———, proctor for ———. Filed and day of , 187 .

29 U. S. district court.

GEORGE SHAW AND DAVID SHAW
ag'st
THE STEAMBOAT BRIDGEPORT, HER TACKLE, apparel, furniture, engines, & boats.

LAWRENCE O. HAGAN, a witness examined by consent of parties saith: I am now chief mate of the Margaret Evans, and have sailed in her in this capacity for nearly two years. She was run into on the morning of the 4th September last, (1865.) She was then lying next to the marble yard at Corlear's Hook, East River. She was heading in shore; her port side was next the shore. She was lying inside of the w'arf, intirely clear of the end of the w'arf. She had been lying there several days; I can't remember how many. The collision occurred about half past one in the morning. I was in bed at the time, in the cabin. The city watchman called me. I went on deck; I looked to see the steamboat, but she was gone and I could not see her. I do not know the amount of damage done to her, but the starboard side abaft the forerigging was knocked in. It broke timbers, knees, water-ways, & five plank in the lower between decks. We have had no other collision but that. After the collision she was taken to the floating dock
30 to be repaired. Rosevelt & Griffiths made the repairs. Before the accident she was a good ship. She had just before the accident made a voyage from Leghorn to New York. She carried a general cargo, consisting of marble, straw hats, statues, sweet oil, rags, citron, and what is generally taken aboard at that port. During this voyage she was strong, made no extra water more than she did with a light cargo; this was a heavy cargo. You could not have anything heavier than marble, much. I would not call her extra tight, perfectly tight; she was as the common class of ships. There is no ship perfectly tight. Before this I had been in her from Newport, in Wales, to Genoa. Before the collision the consignees of the cargo she brought from Leghorn to New York made no claim for damage to the cargo. There was no damage to the cargo befor' the collision. After the collision we got sails under her to stop the water from coming in. We hauled her up into shallow with the aid of hawsers and laborers. There were also steam-pumps used to clear her of water; she had six or seven feet of water in the hold. This collision damaged the cargo, but

I don't know to what amount. The principal damage was to the rags and pumice-stone, and a few cases of olive oil were broken. At the time of the collision we were moored as close as possible to the w'arf; no part of the vessel projected beyond the side of the w'arf. The sails used to keep the water out, belonged to the ship; they were en-
31 tirely destroyed. The sail used was a top-gallant sail. There was also a coil of rope used to tie the sails underneath her bottom; It was three-inch Manilla; that is, three inches in circumference. There was a city watchman on deck at the time of the collision.

Cross-examined:

The sails used are now on board the ship. They were about 1 year old. It was only one sail; had been used about a year. It is not fit for use. It has rotted. It was in the water about 9 days. The coil of rope was cut away by boatmen, who have stolen it. The Margaret Evans was about 147 feet long. The w'arf was about 250 or 300 feet long. The w'arf lay about east & west, and we lay on the north side of it. The stern was about 20 feet from the end of the w'arf. There were ships lying north of us at the next pier, about ½ a cable length off. They were right abreast of us. The w'arf projected further into the river than the w'arfs or piers above or north of it. There were no piers north of us; but it was the open river there. I turned in about 9 or 10 o'clock the night of the collision, and was not on deck again until after the collision. We had no lights set, and there were none at the time of the collision. There was a city watchman on look-out. He was not connected with the vessel. He was one of the city police who was watching to prevent anything from being stolen. I heard the noise of the collision but did not know what it was. The watchman called me immediately. I was getting up when he called me. Did not stop
32 to dress, but went right on deck; when I came on the deck the night was foggy. I can't say how far I could see. I could see the vessel at the next pier which I have mentioned, but I could not see the steamboat. During the time we lay there I did not notice the current there, except that it was strong. The hole was both above and below the water line.

Re-direct:

We received some damage by being pressed against the pier, I do not know the amount of this damage. Until this collision wee were in every respect, sound, tight, & strong.

Cross-ex'nd:

None of the ship's officers and crew were stationed as look-out on that night, and no one was on deck except the city watchman.

LAWRENCE O. HAGAN.

Sworn to before me this 19 Oct., 1865.

EDWARD J. OWEN,
Not. Public, N. Y. City.

(Endorsed:) U. S. district court. George Shaw & David Shaw ag'st Steamboat Bridgeport, her tackles, &c. Deposition of Lawrence O. Hagan.

33 *The* consent that the foregoing testimony of Lawrence O. Hagan may be sworn to before a notary public, and retained by D. D. Lord, and read as evidence on the trial an action to be brought

by the owners of the ship Margaret Evans against The Steamboat Bridgeport or her owners to recover damages for the collision, which occur'ed in March, 1865.

New York, 19 October, 1865.

OWEN, GRAY & OWEN,
Proc's for Steamboat Bridgeport.

(Endorsed:) U. S. dist. court. George Shaw & al. ag'st St'r Bridgeport. Deposition of Lawrence O. Hagan. D. D. Lord, for lib'ts. Filed April 30th, 1866. S. T. Jones, clerk.

34 U. S. district court, southern dist. of N. Y.

GEORGE SHAW AND DAVID SHAW
ag'st
STEAMBOAT BRIDGEPORT, HER TACKLE, &C., &C.

CITY AND COUNTY OF NEW YORK, *ss:*

The deposition of ROBERT ROBINSON, a witness examined de bene esse, herein, (under agreement that his testimony when sworn to before a notary public need not be filed, but may be retained by libellant's proctor; the claimant's proctors to be allowed to make copies, and that the same when so taken, sworn, may be read in evidence, subject to all legal objections except as to form,) being duly sworn, saith:

I am forty-eight years of age, and reside, when at home, at 395 Cherry street. If I do not get employment soon I shall go down south for the winter. I was watchman of the "Margaret Evans" at the time of the collision with the steamboat Bridgeport; at the time of the collision I was standing on deck, on the starboard side just forward of the main rigging. I went on board of the Margaret Evans at about half past five of the afternoon before the accident. She was lying alongside of the pier at the foot of Corlears street; her head was towards the land,
35 and her stern was towards the stream; her stern was about thirty or thirty-five feet inside the end of the pier; there was a large gunboat (a monitor) lying at the end of the pier, and beyond the Margaret Evans. I heard the Bridgeport about five minutes before the collision, but thought her a ferry-boat. The Grand Street Ferry was near. Until I saw the Bridgeport I supposed her to be a ferry-boat. I hailed her when she was over one hundred feet off. I saw the loom of her and hailed her to give her warning. She struck us almost immediately afterwards. She struck us about six feet abaft the forerigging. She made a dent in our side—one part was stove right in—and broke a pile on the dock into two pieces by pushing us against it; started a butt on the side next the pier, and did other damage. I got assistance and hove her into shoal water, & got the steam-pumps and men to repair the damages till we could get out the cargo. I immediately after the collision, I got out the barometer, compasses, medicine chests, & other articles likely to be damaged by water, and put them into the gunboat. It was foggy at the time of the collision, but not so foggy but a vessel might be seen with a sharp look-out. I could see the gas-lamps at the foot of Corlears st. The fog began about one hour and a half before the collision. My attention was first called to the fog by the
36 Grand St. Ferry bells. When the collision happened I hailed the steamboat and asked her name, but they would not answer. I

could see by the build of her, it was either the Bridgeport or the New Haven boat. The next morning, after the collision, I went down to the New Haven boat and found she had been in all night. I then went aboard of the Bridgeport and went forward and looked at her stem, and found the oakum started, and other scars showing she had run into something. When I saw this, I slewed around to one of the men on the deck & said to him, "You had a heavy thump this morning." He said, "Yes; I was below, & it gave me such a shake I did not know where we were going—whether it was not Hell Gate rocks." (Objected to.) I then asked him where the mate was, and he pointed him out to me standing on deck at the aft side of the paddle-box. I said to the mate, "That was the Margaret Evans you ran into this morning." He says, "What do you say?" I told him again. The he said to a man alongside of him, "We did not run into anything, did we?" The man drawled out, "No." Then I said, "You know you did." Then he said, "Is she much hurt?" and I said, "You know she is," & I just turned around & walked ashore.

Being cross-examined, he says:

I am a seafaring man, and have been so since 1834. I did not belong to the crew of the Margaret Evans at the time I was on board of
37 that vessel, but belonged to the merchant police. I never belonged to the Margaret Evans. I was engaged as a watchman by the merchant police to watch ship & cargo, the same as a master or mate, and when they were not on board to take charge of everything. I received my wages from the merchant police. I was paid twelve shillings a night. The merchants' police are an organization which supplies watchmen for vessels. My duties were to watch after thieves and look after vessels. I went on board the vessel that night about 5½ o'clock. I remained on deck until the collision. I did not station myself in any particular place, & walked to keep myself warm. I walked on the starboard side: that was the side off from the deck. I was walking & strolling about the deck keeping my eyes open, as it was a dangerous place for thieves. No lights were set in the rigging or places on the deck of the Margaret Evans during the night. The mate of the vessel and his son were the only persons on board the Margaret Evans. I was keeping a bright look-out for thieves all the time. There was stars out the fore part of the night, but about two o'clock in the morning a fog set in. I could not see any ferry-boats as we were way up in a corner & could not see out into the river where the Grand Street Ferry runs, as it was around the point. I heard the ferry-boats' whistles & the bells on piers. I was walking on the starboard side of the
38 Margaret Evans when I first heard the noise of the Bridgeport's wheels. When I heard the noise I was on the foreside of the main rigging, & I stood and listened. It was not more than three or four minutes after that when she struck us. When she was over a hundred feet off I hailed her. I call it about a hundred feet. It might be a little more, but in weather like that I might be deceived. I did not notice to see w'eather there was any lights in the steamboat. I could see men on the deck. I sung out as loud as I could, "Hullo, hullo there." No reply was made. She had so much weight on, she could not stop, and came right into us. The collision occurred about half past three o'clock in the morning. I know it was between three & four o'clock. The stern of the Margaret Evans, lay thirty feet from the end of the dock. The length of the "Margaret Evans," was about 250 feet. The pier was about 400 feet long. The bow of the vessel was about 100

feet from the land. The pier is not a regular built pier, but runs out from Corlears street down to Jackson st., forming a bulkhead. The vessel laying at the end of the pier, was a gun-boat of some sort. I went of my own accord to the Bridgeport to makes enquiries. I don't know the names of the parties on board the Bridgeport whom I
39 talked to; at the instant of the vessel striking I called up the mate.

ROBERT ROBINSON.

Sworn before me January 24, 1866.

EDWARD J. OWEN,
Notary Public, N. Y. County.

(Endorsed:) U. S. district court. George Shaw et al. vs. Steamboat Bridgeport. Depo. Rob't Robinson. D. D. Lord, proctor for libell'ts. Filed April 30th, 1866. S. T. Jones, clerk.

40 U. S. district court. Before Hon. Judge Benedict. Brooklyn, Ap'l 16th, 1866.

GEO. SHAW & DAVID SHAW
vs.
THE STEAMBOAT "BRIDGEPORT," HER TACKLE, &c., &c.

Testimony.

ALEXANDER LANDER, called for the libellants, being duly sworn, testified:

Q. What is your business?

A. Stevedore & rigger.

Q. Had you any thing to do with the Margaret Evans in Sept., 1855?

A. I was stevedore, discharging the cargo.

Q. Do you know of her being run into in that month?

41 A. Yes, sir.

Q. When did you first hear of her being run into?

A. About six o'clock in the morning—a little past six—perhaps five or ten minutes.

Q. Of the morning of the collision?

A. Yes, sir.

Q. At the time of the collision, how was the ship lying?

A. She was lying north & south; her head north, and the stern south. I think the river is east and west. The gentleman you read, (referring to the deposition,) I think is mistaken; he read east and west; she lay north and south.

Q. Which was north?

A. Her head was north, and her stern was south. The river at that point runs east and west; the gunboat lay east and west; we lay north and south.

Q. At the foot of what street was that wharf?

A. Corlear.

Q. How was the Williamsburgh Ferry on this side; how did it
42 bear from where the ship was lying; the ferry-house?

A. About east-northeast.

Q. The ferry-house on this side was just beyond the point of the hook?

A. Yes, sir, quite a distance, some two blocks; there is Corlear, then there is Cole's stores, and then the next block is Williamsburgh Ferry.

Q. Is there merely a pier or a bulkhead that runs clear in? (Showing diagram to witness.)

A. That runs right in there. Here is Cole's stores, and here is Williamsburgh Ferry. That (chart) is wrong; this (diagram) is right.

Q. How near was the Margaret Evans' stern to the end of the pier?

A. I think about 25 feet—from 25 to 28 feet—when I put her in there.

Q. Inside the end of the pier?

A. Yes, sir.

Q. About how long is the Margaret Evans?

A. I have no knowledge.

Q. Was she over 100 feet long?

43 A. I should think in the neighborhood of 175 or 180 feet, just from running my eye along—somewhere in that neighborhood.

Q. Do you recollect whether there was any vessel lying at the end of the pier?

A. There was a gunboat.

Q. Do you remember the name?

A. I would remember the name if I heard it.

Q. Was it the Matawasca?

A. That is the name, sir.

Q. Do you remember the Quaker City lying, and whereabout?

A. Yes, sir.

Q. Where did she lie?

A. She lay in the same slip as we did.

Q. Inside or outside?

A. Outside, previous to going away—outside of us.

Q. Did she lie nearer to the stream, or nearer to the shore, than you, or did she lie abreast of you?

A. She lay alongside.

Q. (Court.) Alongside of the Margaret Evans?

A. Yes, sir.

Q. Where did she move to?

44 A. I think she moved out on Saturday.

Q. What day of the week did this collision happen?

A. Monday.

Q. Did you examine the character of the damages to this vessel—the Margaret Evans?

A. Yes, sir.

Q. Describe, if you can, as nearly as you can recollect, the character of the damages.

A. Whatever steamer it was hit the vessel struck her just abaft the fore channels, and cut her two planks above the water's edge, right along; stove in the water-ways, some of the deck plank, the knees; stove the port-side, where she came against the spiles; stove her bilge. She made more water from the port side than where the hole was knocked in.

Q. Did she do any damage to the wharf?

A. She broke the spiles that were put there for keeping the steamboats off—I should think some 16 by 16—broke them off in three

45 or four places.

Q. What did you infer as to the strength of the blow—as to the speed of the vessel that ran into her?

A. I should think the vessel could not be going over three or four knots an hour, outside; that is the utmost, I think, she could have been

going; if she had been going any faster, it would have been more serious.

Q. What sort of a vessel is the Margaret Evans; how many decks has she?

A. She has two decks, and a sort of a temporary spar deck; she was a two-decked vessel, and she was filled up from forward to the poop, for passengers.

Q. The upper deck, is it?

A. The spar deck.

Q. There is the spar deck, between decks, and the lower deck?

A. Yes, sir.

Q. Where did the steamboat break into?

A. Into the lower deck.

Q. Did it cut a pretty clean hole in any part of her?

A. Yes, sir.

46 Q. How far was the gunboat lying at the end of the pier, south of the stern of the Margaret Evans?

A. I should think the gunboat would be 60 feet, that would make it from 85 to 90 feet; it was only from 25 to 28 feet from the stern of the Margaret to the dock, and allowing the gunboat to be 60 feet, it would make the distance outside about 90 feet.

Q. How far from the stern of the Margaret Evans was she struck by the steamboat?

A. From the stern forward, about two-thirds of the length of the ship.

Q. One-third the length of the ship is about 60 feet, two-thirds about 120 feet?

A. Yes, sir; something in that vicinity.

Q. Then this steamboat must have got how far inside of the outer side of the gunboat?

A. From 225 to 230 feet inside of the gunboat.

Q. Is this a correct description of the river at that place? (Diagram.)

A. This ain't right here; because if this is Corlear street, where is the dock?

47 Cross-examined:

Q. The pier you say is 420 feet long at which the Margaret Evans lay?

A. I don't know the length of it.

Q. About how long?

A. I don't know, sir.

Q. Which way does that pier run—east and west?

A. North and south; that is within a point or so.

Q. The Margaret Evans lay up on the east side of the pier?

A. Yes, sir.

Q. With her head in towards the shore?

A. Yes, sir.

Q. Was there any pier above that extended out as far as that?

A. No, sir.

Q. Is there any other pier between that and the point of the hook?

A. No, sir.

Q. Is there a bulk-head along above that up to the point of the hook in front of Cole's stores?

A. Yes, sir.

Q. And when you come to the point of the hook there is a short turn round there?

48 A. Yes, sir.

Q. What ferry proceeds out there, just above the point of the hook?

A. The Williamsburgh Ferry.

Q. The gunboat that you speak of lay across the end of this pier?

A. She lay the same way the stream ran.

Q. She lay at right angles with the way the Margaret Evans lay?

A. Yes, sir.

Q. And she lay across the end of the pier?

A. Yes, sir.

Q. Which way was her head—to the east or west?

A. West, I believe, sir; I am not certain.

Q. Was her head towards the stern of the Margaret Evans, or was her stern?

A. I can't say, sir; I forget which way she lay.

Q. Had you been on deck for some time there—on the deck of the Margaret Evans?

A. What time, sir?

Q. You were not the watchman?

A. No, sir.

49 JAMES BURNS, called for pl'ffs, being duly sworn, testified:

Q. Do you remember this collision of some vessel with the Margaret Evans, in Sept., 1865?

A. I remember a collision, but I can't tell you the month.

Q. What was your business at the time?

A. Foreman for the stevedore.

Q. Who?

A. Mr. Lander.

Q. The witness who has just been examined?

A. Yes, sir.

Q. Did you hear his description of the place where the Margaret Evans was lying?

A. Yes, sir.

Q. Is that correct?

A. Well, as near as I can judge, it is; pretty near it.

Q. Was his description of the damage done to the Margaret Evans correct as far as you can make it?

A. That I could not tell you, sir, for I did not examine it.

50 Q. Do you remember whether there was a gunboat lying outside of the pier at which the Margaret Evans was lying—across the end of the pier?

A. Yes, sir.

Q. Do you recollect her name?

A. I think it was the Matawasco.

Q. How far inside of the outer side of that gunboat was the stern of the Margaret Evans as she lay?

A. Well, it might be 60 or 70 feet.

Cross-examined:

Q. This dock that has been spoken of, at which the Margaret Evans lay, do you know the length of it?

A. I can't tell you, sir; I never measured it.

Q. Can you say about?

A. I could not give an idea; it might be 100 and it might be 300; I never took any notice.

Q. Suppose that (drawing of counsel) is the pier, where is the next slip that comes out here?

A. At Jackson street.

51 Q. Then the next pier from the one where the Margaret Evans lay is at Jackson street?

A. Yes, sir.

Q. And there is a continuous bulk-head from the end of this pier down to the next pier at Jackson street?

A. A continuous bulk-head down to the foot of Jackson street.

Q. How far do you think it is from this pier at which the Margaret Evans lay, up to the point of the hook?

A. I don't know what you call the point of the hook.

Q. Well, just this side of it—the Williamsburgh Ferry?

A. I suppose it would be two blocks, or a lettle over it.

Q. The river takes a sharp turn in another direction at the point of the hook?

A. Yes, sir; it takes rather a sharp turn from the ferry.

Q. It turns off to the northward and westward—to the left as you look up?

A. Yes, sir.

52 ROLAND W. GRIFFITH, called for pl'ff, being duly sworn, testified:

Q. What is your business?

A. Ship-carpenter.

Q. Did you do any repairs to the Margaret Evans in the fall of 1865?

A. Yes, sir.

Q. What damage had she sustained?

DEF'T'S COUNSEL: Unless it is for the purpose of showing how severe the blow was, I don't see any necessity for this.

PL'FFS COUNSEL: I want to show the force of the blow.

Q. What damage was done to her? Describe as nearly as you can?

A. Broke her water-ways, knees, planking outside, ceiling inside, and started the ship generally.

Q. How thick were her water-ways?

A. I think in the neighborhood of 16 inches; 14 by 16, I think, sir.

Q. What timber were they made of?

A. Oak, sir.

Q. Which deck was it that was broken into?

A. She hit her about between decks.

Q. What do you call between decks—the lowest of all decks?

53 A. No, sir.

Q. The second deck?

A. The second deck.

Q. Did she make a clean cut in the between decks?

A. Well, broke it in, sir.

Q. Stove her in?

A. Yes, sir.

Q. About how wide was this cut on the outside?

A. Do you mean up and down or lengthwise.

Q. Lengthwise.

A. I should judge in the neighborhood of about 6 or 7 feet.

Q. What would you infer as to the speed of the steamer from the character of the damage?

A. I suppose she would be going in the neighborhood of about three knots an hour, probably.

Q. Did you at any time go to see Mr. Corlies, the agent of the vessel?
A. Yes, sir.
Q. How soon after the disaster?
A. About 8 o'clock I think, sir.
Q. Of the morning of the accident?
A. Yes, sir.
54 Q. What did he tell you to do?
A. The captian was with me to get steam-pumps and pump her out, and stop the leak up.
Q. Do you remember how the Margaret Evans was lying at the time of the collision?
A. Yes, sir.
Q. How was she?
A. About north and south, sir.
Q. How far inside of the end of the pier?
A. Well, I suppose in the neighborhood of, probably, 30 or 35 feet.
Q. How far inside of the outside of the gunboat that was lying at the end of the pier?
A. I should judge about 35 feet; that map (diagram) is not right; it is a regular bulk-head; all bulk-head there; I should judge that bulk-head to be a thousand feet long, carried right down from Corliers street; there is no pier.
Q. Is this map right? (City Directory map.)
A. Yes, except that there are no piers there at all; all bulk-head.
55 Q. Are there any piers on the New York side, beyond the point of the hook, north, toward Blackwell's Island; any place where a vessel could come in?
A. Plenty of piers, sir.

Cross-examined:

Q. I understand you to say that it is all filled up smooth—the bulk-head without piers—from Corlear down to Jackson street?
A. Yes, sir.
Q. Corlear st. is where the vessel lay?
A. Yes, sir.
Q. From that up to the very point, that is also filled up?
A. Yes, sir.
Q. Turning again after you come to that point, is that a straight bulk-head round there?
A. Yes, sir.
Q. Until you come to the ferry?
A. Yes, sir.
Q. No slips?
A. No, sir.
Q. This pier at Corlear's , that does extend out into the river?
56 A. It goes out the same as South street does. It runs right along with the street, the bulk-head does. That commences there at Cherry street, the end of that.
Q. About how far do you think it is from the inland point of the bulk-head, where the Margaret Evans lay, to the point of the hook just this side of the ferry?
A. From ten to twelve hundred feet, I should say.
Q. Can you state how far it is from the point before spoken of to the end of the pier to the south?

A. I suppose probably six or seven hundred feet.

Q. And how far from that end of the pier down to Jackson street, west?

A. I should say from twelve to eighteen hundred feet; a very large bulk-head.

Q. Were you called upon to examine this vessel at this time you speak of, with reference to repairing?

A. Yes, sir.

Q. Where did she lie at the time?

A. At the point of the hook.

57 Q. Who requested you to call and examine her?

A. The captian notified me she had been run into. We went together to see Mr. Corlies; stated to him the damage—what it was. The captain told him the ship was sinking—in a terrible state—and that it was necessary to put steam-pumps in to keep her clear. Then Mr. Corlies told us to get steam-pumps and put them in, and stop the leak.

Q. Did you make the repa'rs finally?

A. Yes, sir.

Q. At whose request?

A. Mr. Edmiston's.

(Respondents' counsel admits the ownership of the vessel.)

Libellants rest, reserving the right to put in a correct map.

58 JAY N. CLARK, called for respondents, being duly sworn, testified:

Q. Did you command the Bridgeport on the occasion of this collision?

A. Yes, sir.

Q. How long had you commanded her previously?

A. About two months.

Q. Were you at that time a licensed pilot?

A. Yes, sir.

Q. How long had you held a license as pilot?

A. Most two years, I think.

Q. To pilot in the East River?

A. Yes, sir.

Q. Where was the boat from, and bound to, at the time of the collision?

A. From Bridgeport, coming to New York.

Q. What did she have on board?

A. She had a general cargo, and passengers.

Q. What is her usual hour of arriving at New York at that season of the year?

A. About 4 o'clock in the morning.

59 Q. Where were you at the time of the collision?

A. At the wheel.

Q. How long had you been at the wheel?

A. From Throggs' Point down.

Q. Who else was in the pilot-house with you?

A. Mr. Smith.

Q. Who was he?

A. He was wheelsman.

Q. Did you have any look-out?

A. Yes, sir.

Q. Who was he, and where was he stationed?
A. He was stationed forward, close to the bow.
Q. What was his name?
A. I don't recollect his name now.
Q. Is he in court?
A. Yes, sir.
Q. What lights had you set?
A. We had our usual head-lights, side-lights, and stern-lights.
Q. You had better give the lights.
A. We had a bright light forward, green and red lights, and a bright light at the stern.
Q. Which side was your green light?
A. Starboard.
Q. A red light port?
A. Yes, sir.

60 Q. How was she in respect to her engine?
A. The engineer was stationed, I suppose. They always answered when I rang the bell.
Q. Did you have a full compliment of men?
A. Yes, sir; first and second engineers and firemen?
Q. What had been the character of the night as you came down by Blackwell's Island?
A. We had a little fog this side of the Gate, and then it lit up so we could see.
Q. (Libellant.) You were on the New York side?
A. Yes, sir.
Q. (Respondent.) Did you have a full head of steam on?
A. We shut off down the length of Blackwell's Island.
Q. How long did you remain shut off?
A. Ten or fifteen minutes, probably.
Q. Did you open again?
A. Yes, sir.
Q. Where were you?
A. The lower part of Blackwell's Island.

61 Q. Why did you do that?
A. The fog let up so we could see plain.
Q. How long did you proceed on in that way before you had occasion to make any changes?
A. About the Houston Street Ferry.
Q. What occurred then?
A. The fog shut down very suddenly, so we could not see anything.
Q. What did you do then?
A. Rung the bells to slow her down.
Q. Was the bell answered?
A. Yes, sir; slowed down very slow.
Q. Did you keep the wheel at the same time?
A. All the while, sir.
Q. How did you steer?
A. We were steering about southwest-by-south.
Q. What next occurred; did you keep shut down till the collision?
A. Yes, sir; kept close shut down, feeling our way along as we should, blowing the whistle all the time.
Q. Frequently?
A. Yes, sir; every minute; probably oftener than that.

62 Q. How near to the point of the hook did you shut off—above or below the Houston Street Ferry?

A. We shut off just before we got to Houston Street Ferry.
Q. Houston st. is above?
A. Further up above; it is above.
Q. How near did you come to the Williamsburgh Ferry?
A. We call it Grand Street Ferry.
Q. How near did you come to that point as you passed it?
A. We could not tell. We saw the lights, and supposed it was the ferry lights. We called it Grand Street Ferry, of course. We heard the bells ring, too.
Q. How fast do you think you were going?
A. Probably three to four miles an hour.
Q. What was the tide?
A. Flood tide.
Q. Strong?
A. Yes, sir.
Q. That would be against you?
A. Yes, sir.
Q. What was the first intimation that you had of the presence of the Margaret Evans—the vessel?
63 A. Our look-out sung out, and we saw from the pilot-house something black; could not tell; we rung immediately our bells—one to stop and two to back.
Q. Had you got any sternway or any reverse of the engine before you struck her?
A. I suppose we had just about time to reverse the engine; that was all.
Q. How came you to be inside there—inside the dock?
A. We supposed that we were far enough to haul down on our course; we alter our course there.
Q. You supposed you were far enough out in the stream to haul her around?
A. Yes, sir.
Q. But in reality you had not?
A. We had not.
Q. Was the fog so thick that it was impossible to navigate accurately?
A. We could not; we could not see well enough.
Q. Why could you not have come to anchor?
64 A. The great difficulty was with our passengers and freight aboard, and the ferry-boats, we would be in more danger than running.
Q. Could you have anchored?
A. We could not have anchored.
Q. Is the tide strong?
A. The tide is so strong there that it would be almost impossible to anchor.
Q. Why could you not have anchored above?
A. We would have anchored at Poor House Flats, but it was quite light there.
Q. How suddenly did this fog shut down on you?
A. Shut down at once; we ran straight into it like running into a bank; could not see the vessel after we had struck it.
Q. You struck it where?
A. A little above Houston Street Ferry.
Q. How far is that from Grand Street Ferry?
A. I don't know exactly what the distance is.

Q. Why did you not anchor there?
65 A. We could not anchor there; it was just as bad there.
Q. Is it bad anchorage there?
A. Yes, sir; the tide runs very strong.
Q. Did you hear any hail from the ship before you struck her?
A. No, sir.
Q. Where had the Moro Castle been lying before that?
A. I think she lay outside of this ship.
Q. Outside of the ship that you struck?
A. I supposed she lay at the dock; some of them said she lay outside of the ship.
Q. Had she been having a light?
A. Always had a light, I believe; she had been lying there some time.
Q. Was she there in fact at the time of this collision, or had she gone away?
A. She must have gone away.
Q. There was no light at that point, on any vessel?
A. No, sir.
Q. As you passed the Williamsburgh Ferry you could see the lights on the ferry?
A. Yes, sir; we could see the lights.
66 Q. Williamsburgh and Grand St. mean the same?
A. Yes, sir.
Q. I mean the one just above the point of the hook?
A. Yes, sir.
Q. In regard to the channel; did you regard yourself as being in a proper place?
A. Yes, sir; we supposed we were in a proper place at that time. We were a little closer to New York, and we could see the lights on one side and not on the other.
Q. What is the change in the direction of the vessel when you turn at that point?
A. Our course down is about southwest-by-south, or southwest quarter south above the hook; below the hook, it is west by quarter south.

Cross-examined:

Q. Where is your license?
A. I left it at home; I expected to bring it.
Q. Who gave it to you?
67 A. The Commissioners of New London.
Q. A Connecticut license?
A. Yes, sir.
Q. You are not a pilot by way of Sandy Hook?
A. No, sir.
Q. Have you any license except one given by the Connecticut Commissioners?
A. No, sir.
Q. How do you know that the Morro Castle lay outside the Margaret Evans?
A. I did not know that she lay outside of the Margaret Evans; I saw her lying there at the dock in the day-time going down.
Q. When did you see her last?
A. I think Friday morning as we were going down, with a light.
Q. Friday was the trip down before the trip on which the collision happened?

A. Yes, sir.
Q. You saw her with a light?
A. Yes, sir; Friday morning, I think I noticed a light.
Q. Did you stop before you got to the Grand Street Ferry?
68 A. No, sir; we did not stop, we shut down before we got to it.
Q. Were you not at one time near running into or being near run into by one of the ferries?
A. Not before the collision.
Q. Were you not near running into or near being run into by a schooner?
A. No, sir.
Q. How near did you suppose you were to the Grand Street Ferry?
A. Almost impossible to tell how near you are, it was so dark.
Q. What did you judge your distance was; could you see the light?
A. Could just discern the light and heard the bell.
Q. Did you see any light after passing the ferry?
A. We saw a light.
Q. How long after passing the ferry?
A. It might be a minute probably.
Q. How long before the collision?
A. Not more than a minute before the collision.
Q. How did that light bear from you at the time?
69 A. I don't know the exact point of the compass.
Q. As you were heading how did it bear from your boat?
A. It bore off northwest.
Q. On which bow?
A. Off her starboard bow.
Q. Was it on the New York shore?
A. Yes, sir; we supposed it was, as well as we could see.
Q. Was it or not a light on the Matawasca or was it on the shore?
A. It was on the shore, we supposed after the collision.
Q. What light do you now suppose that it was?
A. I suppose it was the light on the shore.
Q. Foot of Corlear street?
A. Yes, sir.
Q. Do you remember seeing the Matawasca at the end of the pier on the morning when the collision occurred?
A. No, sir.
Q. You don't recollect being hailed by any boat?
A. After we backed off, a man hollered what steamboat it was? that was the first I heard.
70 Q. Why do you say there was no place to anchor before you came to the ferry?
A. We don't consider it safe to anchor there in the stream, on account of the ferry-boats is on thing, and on account of the strength of the tide. There is a ferry running diagonally from Grand street across to Williamsburgh.
Q. Inside of that was there not room to anchor if the tide permitted?
A. We don't consider it safe to anchor.
Q. Did you have an anchor?
A. Two of them.
Q. Did you have a cable?
A. Yes, sir.
Q. Where was it?
A. Kept it ready coiled on deck ready for any moment.
Q. How long?

A. About sixty fathoms.
Q. Where did you keep it?
A. About fifteen fathoms on deck, the remainder below.
Q. What do you keep it in?
A. It lies loose on deck.
71 Q. Is it bent on to the anchor?
A. Yes, sir.
Q. And it was so when the *colision* happened?
A. Yes, sir.
Q. Have you ever seen vessels at anchor between Houston St. Ferry and Grand St. Ferry?
A. Never saw a steamboat there; very seldom any vessels; perhaps one to keep her from running ashore.
Q. Why is it more difficult for steamboats?
A. Steamboats are larger and the tide would have more effect upon them.
Q. How large is your anchor?
A. I don't know the weight; a pretty large anchor; the largest I have ever seen for a steamer of her size.
Q. How was the whistle blown? from what part of your boat?
A. I blew the whistle from the pilot-house; we have a whistle string that leads into the pilot-house.
Q. Who was with you in the pilot-house?
A. Mr. Smith.
72 Q. Who is Mr. Smith?
A. He is our wheelsman.
Q. Did you go near enough to the Grand Street Ferry to see the lights distinctly?
A. Not distinctly, sir; we saw lights there.
Q. How far below the Grand Street Ferry is Peck slip, where you came in?
A. It is three quarters of a mile, I think; I don't know but a mile; I I don't know the exact distance.
Q. Could you hear the bells ringing on the Williamsburgh side of the ferry?
A. I did not notice them; noticing the bells on this side perhaps we did not notice them at the time.

Re-direct:

Q. How long have you been accustoned to navigate these waters in sailing vessels and otherwise?
73 A. A little over twenty years.
Q. Before your engagement here what had been your business?
A. Captian of the packet running from Bridgeport for thirteen years; the other seven years before that, I was running from Greenwich on the packet.
Q. State, if you can, if there was anything you could have done on your part after you struck that fog to avoid a collision?
(Obj'd to. Admitted subject to objection.)
A. I don't think I could have done anything else more than I did do at the time.
Q. Do you think that in that current and tide your anchors would have held your boat?
A. I did not think they would hold there; they might.

Re-cross:

Q. Have you ever tried to anchor there?

A. No, sir; not a steamboat.

Q. Does the tide run swifter there than it does in the stream,
74 in the East River, say?

A. No, sir; I don't suppose it runs any stronger; that is, what we call the East River.

Q. In the East River it runs the same?

A. As we get above dry dock it does not run so strong; it is wider.

Q. Do you recollect how the tide was that morning?

A. It was flood.

Q. About how much?

A. I should think it must have been about half flood; we had the tide against us when we came through the Gate.

Q. How does the current run between Houston and Grand Street Ferries when the tide is at flood—north and south?

A. Yes, sir; about northeast and southwest, I should think.

Q. How long had you been in charge of a steamboat before this?

A. About a year and half.

Q. And that had been in this boat?

75 A. No, sir; on other boats.

Q. What boats had you been in since you first commenced running a steamboat?

A. I first ran the steam-propeller Bowman, from Bridgeport to New York.

Q. How long were you in her?

A. Not quite a year, I think.

Q. What boat did you take after that?

A. I was on the Rip Van Winkle. We had her chartered.

Q. How long did you run her?

A. About three months.

Q. What boat did you take after that?

A. Stamford.

Q. How long did you run her?

A. I don't recollect the exact time.

Q. For about how long; one month or two months?

A. Two months, certainly.

Q. What boat after that?

A. I believe the steamer Tamerlane was the next one.

Q. What after that?

A. I could not tell, really, I have changed around so often.

76 Did the Bridgeport come after the Tamerlane?

A. Yes, sir.

Q. How long had you been running the Bridgeport when this happened?

A. About two months.

Q. In any of those steamboats had you tried anchoring in that part of the river?

A. No, sir.

Q. With other vessels?

A. No, sir.

Q. Had you ever anchored with any vessel below Blackwell's Island?

A. Yes, sir.

Q. What part?

A. Poor House Flats.

Q. Did you ever anchor below that?

A. I don't think I have anchored below Poor House Flats; I may, but I don't recollect.

Q. Well, when you say the anchor would not hold, you speak from what you infer; you don't know certainly?

A. Yes, sir; I don't know certain.

Q. You did not throw the anchor over?

77 A. No, sir.

Q. You did not try to get into any of the piers?

A. No, sir.

Q. (Court.) When you struck this vessel had you hauled past the hook?

A. Yes, sir.

Q. (Court.) When this fog bank came did it shut down from above, or was it on the water when you went into it?

A. It seemed to be on the water, a square fog-bank; we often meet them.

Re-direct:

Q. How far could you see that fog-bank before you reached it?

A. We could not see it but a little ways.

Q. A hundred feet?

A. It might be a hundred feet ahead.

Q. Do you know anything about the bottom of the channel there.

A. I do not personally. It is always considered to be rocky.

78 Re-cross:

Q. You say it is considered rocky. You don't know whether it is or not?

A. No, sir.

EDWARD SMITH, called for respondent, being duly sworn, testified:

Q. What is your business?

A. Wheelsman.

Q. What are you; a seafaring man?

A. Yes, sir.

Q. What has been your experience in navigating vessels between here and Bridgeport?

A. I have been on the route some seven years.

Q. You were on the Bridgeport on the occasion of this collision?

A. Yes, sir.

Q. In what capacity?

A. As wheelsman.

Q. Where you a the wheel at the time?

A. Yes, sir.

Q. How long had you had the wheel?

79 A. Ever since we left Bridgeport.

Q. Who was in the wheel-house with you?

A. Captian Clark.

Q. Where is that wheel-house; situated forward?

A. Yes, sir.

Q. Like other steamers?

A. Yes, sir; on the hurricane deck.

Q. Do the bell-pulls come up into the wheel-house?

A. Yes, sir.

Q. And the whistle-pull also came in?

A. Yes, sir.

Q. Did either of you have hold of the wheel?

A. Yes, sir.

Q. Which wheel did you have?
A. I stood on the starboard side with the forward rim, and Capt. Clark on the port side.
Q. Where were you when you first shut off?
A. We shut off at the upper end of Blackwell's Island.
Q. For what cause?
A. Fog.
80 Q. And how far did you run shut off, as near as you can tell?
A. Until we got to the lower end.
Q. Then what did you do?
A. The fog let up so we could see.
Q. You rung the bell?
A. Yes, sir; and let her go again.
Q. How long before your next movement?
A. Down by Houston St. Ferry we caught the fog again.
Q. Then what did you do?
A. Rang the bell to slow her down.
Q. Did you observe this bank of fog that the captian has spoken of?
A. Yes, sir.
Q. How near was it to you; did it shut down upon you, or was it before you?
A. It shut down very quick.
Q. How far could you see it ahead before you got into it?
A. It is hard to judge; a short distance.
Q. The length of your boat?
A. Twice the length of the boat.
Q. How dense was that fog?
A. It was very thick.
81 Q. When you struck into it how far could you see then?
A. We could scarcely see the head of the boat.
Q. Could you see the look-out?
A. Yes, sir.
Q. How close were you shut off?
A. Very close; hardly had steerage way.
Q. About how far were you at that time from Grand St. Ferry when you struck into this bank of fog?
A. We were between Grand and Houston streets.
Q. The two ferries run out, and you had got between the lines of the two ferries?
A. Between the two.
Q. How far do you suppose you were out in the stream?
A. We were near the middle of the river when we struck the fog.
Q. How did you steer?
A. By compass.
Q. How did you steer?
A. Southwest-by-south.
Q. How did you come to haul up?
82 A. We saw the Grand St. Ferry lights.
Q. Then you hauled up to what course?
A. Our course was west, and a little south.
Q. That brought you on your course; that would bring you along down?
A. Yes, sir.
Q. How long after you held up was it before the collision?
A. Perhaps a minute and half.
Q. Did you hear any hails?
A. No, sir.

Q. Did you see any light on the end of the pier, or anywhere near there, to indicate there was any light there?

A. Yes; we did see a dim light.

Q. Where was that?

A. Just beyond the New York shore; we could not tell exactly.

Q. Where did you suppose you were in regard to the channel-way?

A. We judged ourselves well enough off to make our way;

83 pretty close in, but far enough off to clear her.

Q. How was the tide at the time?

A. Full strength—flood tide.

Q. How fast do you think you were going at the time, shut off.

A. Going very slow.

Q. If the fog was so thick, why did you not anchor?

A. I give the same reason that the captain does. It is not considered safe to anchor there. You very seldom see any vessel anchored there.

Q. You had your anchor ready that you might anchor?

A. Yes, sir; two of them.

Q. Was there anything you could have done to have avoided it, except anchoring?

(Obj'd to. Taken subject to objection.)

A. Nothing that I know of.

Q. How near were you to the ship when she was first reported?

A. Perhaps fifty feet.

Q. Close in upon her?

A. Yes, sir.

Q. Who reported her?

84 A. The look-out and the mate about the same time.

Q. What was done then?

A. One bell was rung to stop her, and two to back her.

Q. Quick?

A. Yes, sir. The captain had his hand upon the bell.

Q. Do you know anything of the bottom of the river along there?

A. No, sir. I understand it is rocky.

Cross-examined:

Q. About what time was this when the collision happened?

A. About half-past three.

Q. It was a little before the usual time that you make that place in the river?

A. No, sir.

Q. What time do you generally get to your pier?

A. Generally about four o'clock.

Q. This was about half an hour before four, then?

A. Yes, sir.

85 Q. How slow were you going when you ran past Blackwell's Island—how many knots?

A. Not over four.

Q. When did you first meet the flood tide—where were you?

A. We made it up above the Gate.

Q. How far above the Gate?

A. I think we took it at Throgg's Point.

Q. And how long was that before you made Grand St. Ferry?

A. I guess about fifty minutes' run; perhaps it would take an hour in a strong flood.

Q. Have you ever tried to anchor between Grand and Houston St. ferries?

A. No, sir.
Q. How do you know it is not safe to anchor?
A. From report. I had it from the pilots.
Q. What pilots?
A. No particular one. I have heard several Gate pilots speak of it.
Q. Speak of anchoring between Grand and Houston St. ferries?
A. No; I have heard them speak of the bottom being rocky..
86 Q. On the New York shore, or on the Williamsburgh shore?
A. I don't know as I ever heard them say.
Q. How near is it rocky, did they say, to the New York shore?
A. I did not hear them say.
Q. Do you know whether there are any piers between Grand St. and Houston St. ferries that you could have gone into?
A. There are piers there.
Q. Did you try to go into any?
A. No, sir.
Q. How do you know you could not?
A. It would be hard to find them with the fog.
Q. When you saw that bank of fog, could you not have found them then?
A. No, sir.
Q. You mean to say, before you went into the bank of fog, you could not have found a pier?
A. We could before we got into it.
Q. But you could not after you got into the fog?
A. No, sir.
87 Q How did you expect to find your way to your own slip if you could not find a pier?
A. We would steer our course and see something if we could.
Q. I don't yet understand why you could find your own pier, if you could not find a pier between Houston and Grand streets.
A. We could tell the ferry whistles along.
Q. You mean to say you could not have found a pier between Grand and Houston Street ferries?
A. I don't mean to say we could not find one. It would be hard to find one. You would be just as likely as not to run into a ship there.
Q. When you first met the fog at Blackwell's Island you shut off; how slow did you go?
A. Very slow.
Q. How slow?
A. P'rhaps four miles an hour.
Q. How far ahead of you could you see when you were in that fog?
A. We could see just beyond the flag-staff.
88 Q. Did that fog light up, blow off, or did you go through it?
A. That fog appeared to blow away so we could see both sides of the river.
Q. And how fast did you go on then?
A. About 13 or 14 miles.
Q. And how long did you continue at that rate?
A. Until we got down to Houston St. Ferry.
Q. What did you do at Houston Street Ferry?
A. Rung the bell to slow her down because of the fog.
Q. At Houston st.?
A. Yes, sir.
Q. And how, after leaving Houston St. Ferry did you keep?
A. We were close shut down when we hit the ship.

Q. Did you shut down close at Houston St. Ferry?
A. Yes, sir.
Q. And kept shut till you hit the ship?
Yes, sir.
89 Q. And you mean to say you did not open her again between Grand and Houston St. ferries?
A. We did not open her.
Q. When did you meet that bank of fog?
A. Houston St. Ferry.
Q. Above or below?
A. About abreast.
Q. Could you see the lights on the ferry when you were opposite the ferry?
A. Yes, sir.
Q. You hauled up when you saw Grand St. Ferry lights?
A. We commenced turning there; yes, sir.
Q. What is the name of the man on the look-out?
A. I don't know his name. He is here in court.
Q. How long had he been with you?
A. I think two or three months—between two and three.
Q. When was he stationed on the look-out?
Q. When we left Bridgeport.
Q. And had been on the look-out ever since?
90 A. Yes, sir.
Q. When did you leave Bridgeport?
A. We left there about near 12 o'clock, I think. 11 o'clock is her hour of leaving, but it is sometimes a little late.
Q. You left there at 12 o'clock?
A. I think it was near 12.
Q. He was stationed on the look-out then?
A. Yes, sir.
Q. Who put him there?
A. That was his business. He did not have any one to order him. He attended to it himself.
Q. Does he attend to nothing else?
A. He attended to the signal lights.
Q. And to look-out?
A. Yes, sir.
Q. What has he to do about the signal lights?
A. He has to trim them and set them.
Q. Does he pay any attention to them after they are once put up?
A. Yes, sir.
Q. What does he to do to them?
A. See that they are burning and in good order.
91 Q. Do they require any attention after the are once set out?
A. Sometimes they do; in a very strong breeze they will sometimes blow out.
Q. Do they require anything else to be done to them?
A. No, sir.
Q. They don't require trimming?
A. No, sir.
Q. They are not trimmed commonly after you leave Bridgeport?
A. No, sir; it is only a four hours' run; they will burn twelve hours unless they are blown out.
Q. Has he anything to do when you are not running?
A. No, sir; nothing particular.

Q. When did he come on board that afternoon?
A. I could not tell you.
Q. Where did he come on board; at what place; Bridgeport?
A. We left Bridgeport Sunday night.
Q. How long before you left was it that he came on board?
A. I could not tell you.
Q. His name is Donovan, is it not?
A. I can't tell you now.
92 Q. (Court.) Where you swinging, or had you stead'ed at the time you struck?
A. We were right on the turn.
Q. (Court.) Had you stead'ed yet?
A. No, sir.
Q. (Libellant.) How did you strike her, a glancing blow or a square blow?
A. We struck her about straight.

CORNELIUS DONNELLY, called for respondents, being duly sworn, testifies:

Q. What is your business?
A. Forward look-out.
Q. Were you on the boat at the time of the collision?
A. Yes, sir.
Q. How long had you been attached to the boat?
A. About three months.
Q. What had been your duties on the boat?
A. No particular; on the look-out.
Q. That was your business?
A. Yes, sir; and attended the signal lights—put them up.
93 Q. Were you on the look-out that night?
A. Yes, sir.
Q. Where?
A. About six feet from her bow.
Q. How long had you stood there?
A. I stood there from the time I left Bridgeport.
Q. Did you see this bank of fog that the witnesses have been speaking of?
A. Yes, sir.
Q. How far was the boat off from it when you first saw that fog?
A. I should not think more than about fifty feet; it came right down on us at once—that is my opinion.
Q. When you ran into it was it thick?
A. Yes, sir.
Q. How far could you see then? Could you see up to the pilot-house?
A. Yes, sir.
Q. Could you see the length of the boat?
A. No, sir.
Q. When did you first see the vessel that you struck; how
94 far was she off when you saw her first?
A. She could not be more than 50 feet.
Q. What did you do; did you say anything?
A. Yes, sir.
Q. What?
A. I sung out, "There is a vessel ahead!"
Q. Did they answer you?

A. Yes, sir.
Q. Did you hear any bells rung?
A. No, sir.
Q. Could you hear the bells from where you stood?
A. If the gangway doors were open we could hear the bells.
Q. How near were you to the Grand Street Ferry when you ran into this bank of fog?
A. Right opposite to Houston st.
Q. Before that could you see the lights along—could you see the shores?
A. We could see the lights.
Q. After the fog had lifted, previous to this, and you were
95 running along, could you see the shores—that is, from Blackwell's Island down?
A. Yes, sir.
Q. After you struck into this fog you could see nothing?
A. No, sir.
Q. Had you any occasion to give any attention to the lights that night, after you left Bridgeport?
A. No, sir.
Q. They were burning all the time?
A. Yes, sir.

Cross-examined:

Q. How many men does the Bridgeport carry?
A. Well, she carries from 18 to 20 deck hands.
Q. How many in a watch?
A. We don't stand no watch; we carry regular watchmen.
Q. What time did the collision happen?
A. At half past three o'clock, I think.
Q. On which side of the bow were you standing when it happened?
A. Standing right by the port anchor.
96 Q. Were you the first to report that vessel?
A. No, sir; the mate and I both sung out together.
Q. What did you sing out?
A. Sung out that there was a vessel ahead.
Q. How long have you been on steamboats?
A. Going on three years.
Q. What boats were you in before going into the Bridgeport?
A. I was on the propeller first; I was on the Stamford; I was on the Rip Van Winkle; I was on the Tamerlane, and on the Bridgeport.
Q. When did you reach Bridgeport that trip?
A. That trip up?
Q. Yes.
A. I should think about five o'clock Saturday eve'ing.
Q. Did you stay on board Saturday night?
A. Yes, sir.
Q. What time did you come on board Saturday afternoon?
97 A. I was going back and forth all the time?
Q. Stayed on board all the time?
A. I would go ashore.
Q. What time did you come on board previous to starting?
A. Half past ten o'clock.
Q. And you started at about twelve?
A. Yes, sir.
Q. Came on board about an hour and half before starting?

A. Yes, sir.
Q. Where had you been before that?
A. I was up through Bridgeport.
Q. When did you leave the boat that afternoon?
A. I could not say, sir.
Q. When did you leave in the morning?
A. I could not tell, sir.
Q. Do you recollect seeing any lights on the New York shore?
A. Yes, sir.
Q. Did you see a light on the New York shore just before the collision?
A. Yes, sir.
Q. How long before the collision?
A. About a minute and a half.

98 FREDERICK RAYMOND, called for respondents, being duly sworn, testified:

Q. Were you on board the Bridgeport at the time of the collision?
A. Yes, sir.
Q. What was your office?
A. I was chief mate of her.
Q. How long had you been chief mate of her?
A. About going on three months.
Q. These boats that have been spoken of by the other witnesses—are they all running in the same line?
A. They have been.
Q. They were at that time?
A. No, sir, not all of them; they had all been running in that same line.
Q. Where were you standing when you passed Blackwell's Island?
A. I came on deck about half way down the island; I had been below all the way down previous to that.
Q. Where did you take your position then?
99 A. I was all over the boat for that matter.
Q What is your duty when coming down through there?
A. Get my lines ready and get my men ready.
Q. Get ready for coming to your dock?
A. Yes, sir.
Q. Had you got your men out?
A. There were about half of them out?
Q. They were coming out?
A. They were coming out.
Q. Do you recollect their shutting off for a fog along up there by Blackwell's Island?
A. She was running under one bell when I came on deck.
Q. After you came on deck, do you know whether she ran hooked on?
A. She did for a while. After we got along down to the end of the island, you could see the land, and they rang the bell to hook her on.
Q. How long did you run hooked on?
A. Till we came abreast the Houston St. Ferry, I should judge?
Q. What was the difficulty then?
100 A. We ran into a fog bank, and shut down again.
Q. How far could you see that fog bank before you got into it?
A. Not over once the length of the boat.
Q. How thick was it?

A. Very thick. You could not see anything; could not see over ten feet from the end of the flag-staff.
Q. Where were you at that time?
A. Standing on the forward deck.
Q. What part of it?
A. Starboard side, close to the starboard anchor.
Q. Did you remain there up to the time of the collision?
A. I did, sir.
Q. How long after you struck that bank before the collision; how soon afterwards?
A. Well, I could not exactly say.
Q. Who first saw the ship that was struck?
A. Well, I think the first deck-watchman saw it about the same time I did.
101 Q. You heard him report it?
A. Yes, sir.
Q. How far did you think it was from you at that time?
A. Not over 100 feet.
Q. Could it have been seen earlier with the utmost vigilance?
A. No, sir.
Q. The fog was so thick?
A. The fog was so thick.

Cross-examined:

Q. Do you remember seeing a light on the gunboat at the end of the pier?
A. I do not.
Q. How did this bank of fog look before you came into it?
A. Well, it looked a good deal the same as any fog does—very thick.
Q. Did it look black?
A. It was not so very black; a sort of a white fog.
Q. At that time, how near were you to the New York shore?
A. About the middle of the river, I should judge.
Q. You could see the lights on both sides?
102 A. We could see them before we struck this fog.
Q. Did you not stop opposite Grand St. Ferry?
A. No, sir.
Q. Did you not stop and drift opposite Grand St. Ferry?
A. No, sir.
Q. Did you hear the ferry fog-bell ring?
A. I did, sir.
Q. From which shore?
A. New York.
Q. How soon after you reported the ship, did the collision happen?
A. After I reported seeing her?
Q. Yes.
A. It was not over a minute.
Q. Don't you recollect being hailed by some person either from a boat or ashore to keep off?
A. No, sir.
Q. Did you hear any person on board of your vessel, to your recollection, answer any such hail?
A. I did not hear any one.
Q. Did you on your trip up see a gunboat at the end of the pier?
A. I did not notice.
103 Q. After the collision, did you see any gunboat at the end of the pier?

A. I saw a sloop of war lying at the end of the pier. She had no armament aboard of her.

Q. Did she have any light?

A. I never saw a light on her.

Re-direct:

Q. Did you hear any hail from this ship that was struck before you struck her?

A. No, sir.

Q. (Court.) This fog that shut down, did it shut down all round, or merely ahead?

A. It shut down all round.

Re-cross:

Q. So that after you saw it, it was astern of you, in front of you, and all round?

A. I could not see; it appeared to be so.

104 JAY M. CLARK, recalled for respondents, & testified:

Q. Had you straightened upon your course after rounding the hook before the collision, or were you yet in the act of swinging?

A. Just turning. We had not struck our course down.

Cross-ex'd:

Q. Suppose you had kept on, how much farther to the right would you have gone; how much longer would you calculate to swing before straightening?

A. We were just checking at the time; we thought she was round about far enough.

Re-direct:

Q. Did the fog work upon you, or did you run into it as a bank?

A. We ran into it. Whether it settled down or raised up, it would be difficult to tell.

Q. How far were you from it before you saw it?

105 A. We could see something like fog just before we struck it.

Q. After you got into the fog, could you see?

A. No; then it was all round us.

Q. (Court.) You understand this bank of fog was lying close to the water all the time, and you met it?

A. Yes, sir; that is what I suppose; we could not tell until we got to it.

THOMAS J. SLINEY, called for respondents, being duly sworn, testified:

Q. Were you on the Bridgeport on the occasion of this collision?

A. Yes, sir.

Q. What were your dut'es?

A. Second engineer.

Q. Who had charge of the engine at the time?

A. I had.

Q. How long had you had charge?

A. From one o'clock.

Q. Before the collision? Go back a little—what were the first orders you received from the pilot-house?

A. The first orders I received from the pilot-house after I came h was to slow down—one bell.

Q. How did you answer it?
A. I slowed down.
Q. How long did you continue that way before the next order came?
A. Probably ten or fifteen minutes.
Q. What was the next order?
A. They rang the hook-on bell; to let her go.
Q. You answered it?
A. Yes, sir.
Q. What was the next order?
A. One bell to slow down.
Q. Was that answered?
A. Yes, sir.
Q. How close did you shut off?
A. Very close; that engine shuts off very close indeed.
Q. Have you any idea how many revolutions you were making at that time?
A. Probably from nine to ten revolutions with the steam we had; we had a very low head of steam—about 17 po'nds.
107 Q. What head of steam do you carry when you are making your twelve knots an hour?
A. We generally carry from 25 to 26; more if necessary.
Q. How long after the bell to shut off the last time, before the collision, in your judgment?
A. Well, probably it might have been half an hour or twenty minutes, somewhere along there.
Q. You did not notice the time?
A. I did not notice the time when we slowed down; I noticed when we struck.
Q. What time was it when you struck?
A. Twenty minutes past three.
Q. Did you, after you struck, look to see what the character of the night was?
A. I did not look out after we struck; I looked out of the window after we had slowed down on the river.
Q. How did it appear?
A. Very foggy, very thick.
Q. You mean it was half an hour or twenty minutes from the
108 first time you slowed down till the collision?
A. Yes, sir.
Q. Were all the orders answered as promptly as they could have been?
A. Yes, sir.
Q. Did you get any turn back of the engine before the collision?
A. Yes, sir.
Q. About how many.
A. About a turn and a half.

Cross-examined:

Q. What head of steam did you have during this time?
A. Seventeen pounds; we opened the doors, shut the dampers, and the steams works right down.
Q. What steam do you usually carry?
A. If we had a fair tide we went along with about twenty pounds, with a head tide, 25 or 26 pounds

Respondents rest.

109 FRANKLIN BOYD, called for libellants, being duly sworn, testified:

Q. What is your business?
A. Watchman.
Q. What were you doing on the night of this collision?
A. I was at my post.
Q. Where were you when the collision happened?
A. I was in South street, between Jackson and Corlear.
Q. Do you remember a fog that night?
A. Yes, sir.
Q. About how long before the collision did it rise?
A. Well, it had been foggy; I came out on post at 12 o'clock, and there was a slight fog then; about two o'clock I could see a heavy fog rising; it came on in a roll; it was very thick at three o'clock.
Q. Have you ever seen vessels at anchor in the East River, between Houston and Grand St. ferries?
110 A. Well, I have seen them anchor along there, but they generally loose their anchor when they do anchor there.
Q. Were you called upon after the collision to render any assistance?
A. I went aboard the ship after the collision, and they asked me if I could not get a stevedore or somebody to help pump her out?
Q. You went for the stevedore?
A. Yes, sir.
Q. What boats have you ever known to loose an anchor?
A. I don't know the names of them; I have seen vessels there loose their anchors; there were some other vessels anchored there which did not loose their anchors.

Cross-examined:

Q. It is considered bad anchorage along there?
A. Well, any place that is rocky is considered bad anchorage.
Q. That is rocky shore along there?
A. It is in places.
Q. Did the bank of fog rise rapidly?
111 A. Not very rapidly.
Q. It came steadily on?
A. It was an hour coming on.
Q. It came perfectly thick—square?
A. Thick and heavy.
Q. When it struck you it was very thick?
A. Very thick.
Q. How long did it continue after it struck you?
A. It did not clear off again until after four o'clock, before vessels could navigate.

JAMES TORRENCE, called for libellants, being duly sworn, testified:

Q. What is your business?
A. A watchman, sir; navy-yard watchman.
Q. You recollect the night of this collision between the Bridgeport and the Margaret Evans?
A. Yes, sir.
Q. Where were you at that time,
A. I was aboard our ship, the Matawasca, on her starboard.
112 Q. Did you see the Bridgeport before the collision?
A. I did not; I saw a boat; I did not know what boat she was; she was coming right down; I thought it was George Law's ferry-boat,

and I sung out two or three times to keep off the ship, and I did not hear any answer, and the bells then began to ring so you could not hear nothing at one time; then in about ten minutes after this boat made away, I heard a crash like at the Margaret Evans; I ran across a little while afterwards to see what was the matter, and the men told me there was a steamer ran into them.

Q. Was there a light *light* on the Matawasca?

A. Yes, sir.

Q. Whereabout was it hanging?

A. It was hanging just starboard.

Q. On the starboard side?

A. Yes, sir; amidships.

Q. Was that the side toward the river or toward the shore?

113 A. Toward the river and toward the shore too; you could see from either place.

Q. Whereabout in the ship was the light hanging?

A. On the poop, sir.

Q. (Court.) Amidships on the poop?

A. Yes, sir.

Q. (Libellant.) Do you recollect any fog that night?

A. Yes, sir.

Q. How long before the collision did it become foggy?

A. I saw it; the appearance of it come up about two o'clock; getting dark.

Q. And what time did it become very dark?

A. About three o'clock, as near as I could *go*; I had no watch and could not see what time it was; that, I think, is about the time, because I asked a gentleman ashore what time it was, and he told me, and that is the time I went by.

Q. Where was this steamboat that you saw before the collision

114 happened?

A. She was aft of our quarter; she was blowing a whistle, whatever boat it was; I could not see exactly what it was; then when I sung out she backed off again.

Q. What way did she go?

A. She backed right out.

Q. How long was that before the collision happened?

A. About ten minutes.

Cross-examined:

Q. How far from Jackson st. did your vessel lie?

A. The ship I was aboard of was a pretty long ship; I never measured her, but she ran fore and aft, she took most all the dock.

Q. All the dock from where?

A. Beyond Jackson St. Ferry.

Q. Which way was her stern?

A. Her stern was lying towards the Margaret Evans.

Q. She lay towards Jackson st?

A. Yes, sir; her head was this way.

115 Q. How far was her stern from the Margaret Evans?

A. It was not very far; I suppose it was as far as from this to the end of the building.

Q. 100 feet?

A. I don't think it was as much as that.

Q. How long was your vessel?

A. She was three hundred and odd feet long.

Q. Had your vessel any masts?
A. No masts; she was getting her machinery in.
Q. Had she any spars up?
A. No, sir.
Q. Perfectly clear?
A. Everything clear as a new pin; she had an awning over her deck.
Q. Was the light above or below the awning?
A. There was no awning where the light was.
Q. The awning was more aft?
A. It was forward; right over the hold, to keep the water off.

116 ROWLAND W. GRIFFITHS recalled for libellant, and testified:

Q. Did you see the captian of the steamer the morning after the collision?
A. I can't say whether it was that morning or next morning.
Q. Did he make any explanation to you as to how the collision happened?
(Obj. to. Allowed.)
A. What explanation did the captian give of how the collision happened?
A. When I asked in the morning how he came to make the mistake, he told me he mistook the light on the corner of the street for the light on the steamer.

Cross-examined:

Q. What street?
A. Corlear and Cherry streets, sir.
Q. Where was this conversation?
A. Aboard the ship.
Q. Where was that?
A. *To* her berth, where she was lying.
117 Q. She had not been removed then?
A. No, sir.
Q. Who was present?
A. Mr Lander, the stevedore, was aboard; I don't know that he was present; Mr. Weble, the painter, was there.
Q. Did you ask him about it?
A. Yes, sir; the captain came up with another gentleman with him; whether it was the mate or not, I don't know.
Q. Was it this gentleman, (Mr. Corlies?)
A. He came up afterwards.
Q. Was he not there with him at the same time?
A. I don't know that he was at the same time, but Mr. Corlies was with the captian afterwards, because I was talking with Mr. Corlies about repairs; I think I met Mr. Corlies twice aboard the vessel about repairs.

118 EZRA QUIMLY, called by respondents, being duly sworn, testified:

Q. What is your business now?
A. I am the wharfinger from Jackson St. to Grand St. Ferry.
Q. How long have you been wharfinger?
A. Going on six years.
Q. And you were such at the time of this collision?
A. Yes, sir.

Q. You were not about that night; did not see anything of this collision?

A. I was not there.

Q. Do you know anything of the character of the river between where this vessel lay and the Grand St. Ferry?

A. Off Grand st. it is rocky bottom there.

Q. Can't anchor?

A. It is dangerous for any vessel to anchor; danger of losing their anchor.

Q. If they lost their anchor they would drift right in ashore?

A. It would be safer to be under way.

Q. How far does that rock extend above and round the hook?

A. The reef runs off from above from way up by Rivington
119 street in the East River, and comes clear down nearly to Grand st. and over toward Williamsburgh.

Q. Nearly to Grand st.?

A. To Broome st.

Q. The rocky point would be just below Grand st.?

A. The bottom is all rocky from about Grand street all the way up on the New York side clear up to Blackwell's Island.

Cross-examined:

Q. How far out do you suppose that rock extends; how far out from the New York shore?

A. The reef extends to about half way across the river, but there is deep water along in there.

Q. Then it runs from a point about half way across the river up along very nearly parallel with the New York shore?

A. Yes, sir; right along the New York shore; the deepest water is on the Williamsburgh shore.

Q. (Court.) Is there any proper anchorage above the hook there?

A. There is no good anchorage until you get to Blackwell's
120 Island.

Q. (Libellant.) Where is there good anchorage?

A. You can run over to Wallabout and get anchorage—abreast the navy yard—there is good anchorage there.

Q. There is good anchorage there on the Williamsburgh shore?

A. Yes, sir.

Q. How far up does it extend?

A. You can anchor between South Seventh St. Ferry and the navy yard, but above South Seventh St. Ferry the water is too deep.

Q. How much water?

A. I never sounded there, but they tell me there is about fifty feet of water—too deep for a vessel to anchor in the current.

Re-direct:

Q. What is the distance from the point of the hook to where the Margaret Evans lay?

A. What we call the point of the hook is the corner of East
121 and Water street; from that to where the Margaret Evans lay, I should judge it was 800 or 850 feet, from that corner—from the corner of East street to Corlear st. about 400 or 420 feet—the length of the dock, and it is about the same distance from there down to the corner of South street, where the Margaret Evans lay; from there to Jackson st. is about 600 or 625 feet. There is a pier makes out about Jackson street, which forms the slip of Jackson Street Ferry; there is

also a pier which makes out about 300 feet above the corner of East and Water streets; that is about 95 feet long.

Q. That extends beyond the bulk-head that extends from Corlear to Jackson street?

A. No.

Testimony closed.

122 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on , the ninth day of June, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Charles L. Benedict, district judge.

GEORGE SHAW ET AL.
vs.
THE STEAMBOAT "BRIDGEPORT," HER TACKLE, &C.

This cause having been heard on the pleadings and proofs, and submitted on the arguments of the advocates for the respective parties, and due deliberation being had in the premises:

Now, on motion of D. D. Lord, esq'r, proctor for libellants, it is ordered that the libellants do recover herein against the respondent, for the reasons and causes mentioned in their said libel, the amount due them, and that it be referred to one of the commissioners of this court to ascertain and compute the amount due and report thereon to this court with all convenient speed.

CHA'S L. BENEDICT.

123 (Indorsed:) Vol.—, No.—. United States district court for the eastern district of New York. George Shaw et al. vs. the S. B. "Bridgeport," her tackle, &c. Ju't. Decree & order of reference. D. D. Lord, proctor for lib'l't. Filed and entered this 9th day of June, 1866.

124 United States district court, eastern district of New York.

GEORGE SHAW ET AL.
vs.
THE STEAMBOAT BRIDGEPORT, &C., &C.

In pursuance of a decretal order heretofore entered in the above-entitled cause, whereby, among other things, it was referred to a United States commissioner, to ascertain and compute the amount due to the libellants for the reason and causes in said libel mentioned, and to report thereon with all convenient speed:

I, Charles W. Newton, United States commissioner for the eastern district of New York, to whom the said matter was referred, do report that I have been attended by the proctors of the respective parties, and have taken and considered the proofs offered, & points and arguments submitted by each, and I do find that there is due the libellants for damages sustained on account of the collision, &c., mentioned in the pleadings in this cause, as follows: For cost of repairs the sum of eleven thousand dollars and twelve cents; for interest on said sum, from the 5th of October, 1865, to the 5th of December, 1867, (the date of this report,) the sum of one thousand six hundred & sixty-eight dollars and thirty-five cents, and for demurrage the sum of seventeen hundred

125 & thirty-four dollars; amounting in the aggregate to fourteen thousand four hundred and two dollars and forty-seven cents due to the libellants on the day of this report.

Recapitulation:

Repairs	11,000 12
Interest, 2 years & 2 mo's	1,668 35
Demurrage	1,734 00
	$14,402 47

All of which is respectfully submitted.
Dated New York, Dec. 5th, 1867.

CHA'S W. NEWTON,
U. S. Comm'r.

(Endorsed:) U. S. dist. court. George Shaw et al. ag'st Steamboat Bridgeport, &c. Commissioner's report. Filed Dec. 9th, 1867. Confirmed nisi, 4 days. Samuel T. Jones, clerk.

126 U. S. district court, eastern district of New York.

GEORGE SHAW ET AL.
ag'st
THE STEAMBOAT BRIDGEPORT, &C.

In pursuance of an order entered in the above cause, whereby it was directed that the commissioner furnish and annex to his report a bill of items, &c., of the amount allowed to the libellants in said report, which is dated December 5, 1867,

I, Charles W. Newton, commissioner aforesaid, do report that the following are the items and particulars which were found by me to be due the libellants.

CHA'S W. NEWTON,
U. S. Commissioner.

Report of items, &c., in Bridgeport ads. Shaw et al.

New York bal. dry dock	$887 20
Coast Wrecking Co	198 13
Copper *furrshers*	2,038 84
Dudley, for punching metal	22 72
Am't carried over	$3,146 89
127 Amount carried over	$3,146 89
Henderson, shipsmith	264 97
Landers, stevedore	413 25
Painting, Ellery & McCarter	409 65
Steamer Ad'lia (services)	52 50
" Niagara do.	40 00
Tobins, running lines	6 00
Farmer, weighing metal	31 00
Gillen, scraping ship	95 00
Top-gallant sail & rope	310 00
Rosevelt & Griffiths, shipwrights	6,230 76
	$11,000 12

Interest on $11,000 12 from Oct. 5., 1865, to Dec. 5, 1867, date of report	1,668 34
Demurrage, 20 d's @ $60 in gold per day, @ 1 44½ in currency	1,734 00
	14,402 46
Disallowed commissioners	$268 49
" watching	24 00
" cancellation of charter party	5,950 00

128 United States district court, eastern district of New York.

GEORGE SHAW ET AL.
vs.
THE STEAMBOAT BRIDGEPORT, &C., &C.

We hereby consent that the commissioner annex to his report a bill of the items allowed by him to the libellants, and that the same be considered a part of such report, and that def'ts have ten days to produce the same to be and to file exceptions.

Dated New York, Dec. 12, 1867.

D. D. LORD, *For Lib'ts.*

(Endorsed:) U. S. district court. George Shaw & als. vs. Steamboat Bridgeport, &c. Consent that the commission annex bill of items to his report, and that time to except be extended. Owen, Nash & Gray, claim'ts pr'rs.

129 United States district court, eastern district of New York.

GEORGE SHAW & AL.
vs.
THE STEAMBOAT BRIDGEPORT.

On reading and filing the above consent, and upon motion of Owen, Nash & Gray, esq'r's, it is ordered that the commissioner, Charles W. Newton, esq., make & a'nex to his report in the above cause a bill of the items allowed by him to the libellants, and that the same be considered a part of such report, and that the claimant has ten days to procure the same to be annexed, and to file exceptions thereto.

Dated New York, Dec. 14, 1867.

CHA'S L. BENEDICT.

(Endorsed:) U. S. district court, eastern district. George Shaw & al. vs. Steamboat Bridgeport, &c. Consent and order that commissioner annexed to his report bill of items. Owen, Nash & Gray, pr'rs for cl'im'ts. Filed December 14, 1867.

130 District court of the U. S., eastern district of New York.

GEORGE SHAW & ANOTHER
ag'st
THE STEAMER BRIDGEPORT, HER ENGINE, tackle, &c. } Reference.

JULY 13TH, *at* 12 *o'clock.*

Present, counsel for respective parties.

On motion of Mr. Lord the examination is adjourned to July 18th, at one o'clock.

JULY 18TH.—Parties appear, & Mr. Lord calls as a witness—

JAMES EDMISTON, who, being duly sworn, says:

I was agent for the ship Margaret Evans in the year 1865. George and David Shaw were her owners; they reside in Montreal. At the time of the collision sh was at the marble yard in East River, foot of Corlear street. She had come from Leghorn. I remember when she was run into by the Bridgeport. I heard of it about half-past
131 10 o'c'k on Monday morning, the 5th of Sept., 1865. It was between one & two of the same day that I went up to see her. She was at the same place, but hauled further up when I got there. She had been hauled on shore when I got there. They were pumping when I reached there. The capt. employed the stevedore to pump and haul on shore, and employed a steam-pump. He had to go to Brooklyn to get the steam-pump.

Q. Did you pay the expenses of repairing this vessel?

A. I did.

Q. What were those expenses? What did you pay?

A. I find all the expenses enumerated in Exhibit "A," except the charges for damage, loss of charter, and *one* commission on disbursements. The usual commission on disbursements is five per cent.

(Obj. reserved.)

She was under an engagement for a charter, previous to the collision, to Baltzer & Deverten, to go to Antwerp. The vessel was occu-
132 pied 30 days in making repairs; that is, it was 30 days from the time of the accident to the time she was completed. The repairs were not commenced immediately after the accident, because Mr. Corliers, who we understood to be the agent, told the capt. not to do anything towards repairing, because he said he would send up his carpenter and do the necessary repairing. Baltzer & Deverter declined to take the charter because they could not get freight at the time she was ready. Failing to get freight here, she was sent to New Orleans to get freight. She took no freight from here. She was a foreign vessel, and could not take freight here. She had to go in ballast.

Q. Apart from the loss of this contract with Baltzer & Deverter, what would be a reasonable demurrage for a vessel like the Evans per day?

(Obj. res'ved.)

A. I should consider for a vessel like her $60 per day demurrage. At the time of the collision the vessel did not stand in need of
133 any repairs; she was in good order. No expenses were incurred in Exh. "A" except those necessary from the collision.

Reference adjourned to July 30th, 1866, 2 o'clock.

JULY 20, 2 o'clock.—Present, commissioners & counsel for respective parties.

The examination of James Edmiston is proceeded with as follows:

In my testimony given the other day in relation to demurrage I stated $60 per day for a vessel like the "Evans." I meant $60 in gold. The charter to Baltzier & Deverter was cancelled. The paper now produced and marked E'hibit B, July 20, 1866, C. W. N., com'r, is the charter spoken of. I am familiar with the business of chartering vessels, and have been so for a long time. I have been engaged in the shipping business sixteen*teen* years. The principal part of my business is the chartering of vessels.

Q. Has your business been such as to enable you to form any opinion of the probable loss from the cancellation of the charter-
134 parts marked Exhibit B?

A. I think it has.

Q. What is your opinion on the probable loss on the cancellation of charter-party, marked Exhibit B?

(Objected to by claimant's counsel; obj. reserved.)

A. I couldn't give an answer to that. The freight I estimated at between £1,700 & £1,800. This was the freight in primage.

Q. What would be the probable expenses on that voyage?

A. At both ports it would be about half of the freight. That would be the expenses of the whole voyage.

Q. Do you know or remember what was the value of pounds sterling at that time?

(Obj. to by claimant's counsel; reserved.)

A. I don't recollect.

(Counsel agree that the value of pounds sterling at the time of this collision may be hereafter introduced in evidence, subject to same objection.)

135 Cross-examined by Mr. Owen, claimant's counsel:

I bought the ship in 1844, and have been agent of the vessel since then. The vessel, I think, is 24 years of age; I am not quite certain. I paid for her $25,000.

(Obj. to by libellants' counsel.)

The conversation referred to in my direct examination, between Mr. Corlies and the captain, was had in my presence. I heard it. I suppose the gentleman was Mr. Corlies. I don't know him personally. The day of the collision occurred on a Monday morning, the 5th, and my impression is that it was just a week from that day that she went on the dock. I went to Mr. Corlies several times between the date of the collision and the time of repairing, but could get nothing definite from him. The repairs, I think, were completed about 25 or 28 days after the collision, but I can't tell the exact date. I have receipts for the amounts paid, according to the statements in Exhibit A.

Q. Have you any personal knowledge that the work charged for, as per statement Exhibit A, was actually performed? If so, state what that personal knowledge is.

136 A. I visited the ship frequently during the course of repairs, and saw the work progressing, to some extent. I couldn't be there all the time.

Q. Will you say now—will you swear—that the work paid for was actually performed?

A. To the best of my knowledge and belief, it was. I did not direct The Columbian Coast Wrecking Company to perform any services about the vessel. I employed Alexander Lander, a stevedore, to do work on the vessel. I did not employ the steamer Adelia. I did not employ the steamer Niagara to perform any service about the vessel. I employed the New York Balance Dock Company to do service about the vessel. I employed the carpenter. I did not employ the blacksmith. The scraping of the ship was done by the captain. I bought the metals charged in Exhibit A.

Q. The item of $24 for watchman—was it prior or subsequent to the collision?

A. It was for watching during the time of making repairs, subsequent to the collision. The capt. bought top-gallant sail.

137 Q. How long did the vessel lay here after the repairs were completed?

(Obj. to by libellants' counsel. Obj. reserved. Answer subject to objection.)

A. I don't recollect. My impression is that it was from 8 to 10 days. I have chartered vessels to Antwerp. The average trip from New York to Antwerp is from 25 to 35 days. I got at my estimate as to her freight on voyage from here to Antwerp by the amount of petroleum she would carry. I estimate her capacity by her British tonnage. The vessel's American tonnage is 899 tons, and the British tonnage is a little over a thousand tons. The estimate of expenses made on the voyage between here and Antwerp was made in reference to her probable expenses for a voyage at the date of that charter.

ROLAND W. GRIFFITH, a witness produced and sworn on the part of the libellants, deposes as follows:

138 I was a shipwright doing business in the city of New York in the summer of 1865. I knew the ship Margaret Evans at the time of her collision with the Bridgeport. I superintended the repairs on the Margaret Evans after the collision.

Q. Look at the paper now shown you, marked Exhibit A, and say whether the services therein mentioned were actually performed.

(Obj. to by claimant's counsel. Obj. overruled. Exception.)

A. There *is* some steamboat bills that I can't anything about. The Columbian Coast Wrecking Company's services are correct; the services of the New York Balance Dry Dock is correct; Mr. White's bill for copper is correct: Farning, the weighmaster, is correct; William B. Donnelly, for purchasing metal, is correct; Roswell Griffith is correct; Henderson, the blacksmith, is correct; Ellery and McCarton is correct; I think the charge of Peter Gullon is correct. That is all I know about the items charged in Exhibit A.

139 Examination adjourned to July 25th, at 1 o'clock p. m.

JULY 25TH.—Counsel for respective parties appeared, & Mr. Owen, counsel for claimants, proceeds with last witness.

Cross-examination as follows:

I am one of the firm of Rosevelt and Griffith. Mr. Edmiston employed me to superintend the repairs—verbal employment. There was no agreement about my employment, only I was to superintend the repairs where she was damaged. I was to take charge of no work except shipwright work. Had nothing to do with stevedore. I employed the Coast Wrecking Co. through the owner of the steamboat Bridgeport. Mr. Corlie was the agent of the Bridgeport. I employed the wrecking co. through him. I was to receive no compensation for my services outside of my employment as shipwright. I took an active part with the wrecking company in stopping the leak. I had two three men there. I did not pay the Columbian Coast Wrecking Company the bill of $198 13. I made complaint about the Columbian Co.'s charges
140 for transferring the pump to the ship. It was about $15. After making inquiry of the Atlantic Insurance Co., I found that the bill was customary and correct.

Examination adjourned to July 31st, at one o'clock.

JULY 31ST, 1 o'clock.—Present, commissioner & counsel for respective parties. Examination adjourned to August 7th, 1 o'clock.

AUGUST 7TH, 1 o'clock.—Examination adjourned to August 14th, at 1 o'clock.

141 OCT. 16TH, 1866, 3 o'clock p. m.—Counsel for respective parties appear, and Mr. Owen, counsel for claimant, proceeds with cross-examination of Roland W. Griffith, as follows:

Q. Do you know the age of the Margaret Evans?

A. I do not; she was an old boat, though. I don't know, but I think she was an old vessel. I can't tell how long I have known her. I am under the impression she was built here by Webb, but I do not recollect.

Q. Are you able to state whether this vessel was what is called rebuilt?

A. No, I can't state; not the way she was rebuilt. I cannot state.

Q. When did you first examine the same in respect to the injuries in question?

A. I examined her the morning of the collision.

Q. At whose request?

A. I think the capt. of the Evans first came to me and notified me of the damage the ship had received, and the capt. and me then went down to Mr. Edmiston's to notify him. He ordered us to go and see the owner of the steamer. We did so. We saw Mr. Corlies.

142 The capt. informed him of the injuries the *the* vessel had received, and Mr. Corlies ordered the capt. and me to fit steam-pumps and put about and stop the leak. I did so; sent ten men. This was all done the day of the collision.

Q. How did the ship lay when you first saw her, in respect to her position?

A. She lay alongside the dock, having been hauled ahead on the mud bank.

Q. State in detail, as you discovered them, the injuries received by the Margaret Evans?

A. She was struck on the starboard side, abaft the fore-chains, knocking a hole in her, up & down, perpendicular, of twenty feet. It may have been over 20 feet. There was not so much of a hole as there was of crushing in of timbers. The width of the space so crushed in was about seven feet. The outside wall & waist were crushed and broken, and inside three ship-frames, clamps, water-wheels, knees, bosom-knees & hanging-knees, ceiling, and decks were broken. That constitutes all.

Q. How much of a leak did you find?

143 A. I can't state the exact amount. The water came in quite free —a great body of water; but not so much as before they nailed the canvass on.

Q. Have you stated all the injuries sustained to the hull of the vessel?

A. Yes, sir.

Q. When were you employed to repair this vessel after the collision?

A. About three weeks, as near as I can remember. I was employed by Mr. Edmonston; I was employed by days' work. Mr. Edmestno at the time had one estimate, and I told him I could do the repairs as cheap as anybody else; that is, to do it right.

Q. Why did you not do this work by contract?

A. I don't know why, but this is a business we don't like to take by contract.

Q. Your reason is, that you do not like to make estimates where the vessel is old, is it not?

A. No, sir; that is not my reason.

Q. When you perform work by contract do you not take into consideration the age of the vessel?

A. No, sir. We generally examine a vessel first, & know what we are going to estimate on her.

144 A. No, sir.

Q. Did you have any conversation with Mr. Corlies in respect to the repairing the Margaret Evans? If so, state when, where, and the substance of the same.

A. Yes, sir. In Mr. Corlies' office once or twice, and I think twice on the dock, where he does business. I asked him in regard to the repairs, and if I could attend to them for him. He told me he did not know anything to the contrary. I think that is about all. He said he would let me know when he was ready. This took place at the several times.

Q. Did you or did you not ever, from any conversation with Mr. Corlies, fix an amount for which the repairs should be done?

A. I think not. I am certain the repairing of the leak occupied the first day after the collision. Between this day and the day we first commenced making repairs on her I think the vessel was engaged in discharging her cargo. I don't know how long it took to discharge the cargo. We gave a general repair to the vessel, a th'rough repair
145 according to the survey. We repaired the vessel all over, according to the survey in the port warden's office. The crush was so great that it was necessary to take her on the dock, and stop the copper, and recaulk and refasten her. That will embrace the general repairs.

Q. Can you not give in detail more particularly the exact repairs that you put upon that vessel?

A. I think I have told you. I have given them as particular as I can.

Q. What was the condition of her copper when you took the vessel on the dock?

A. The copper was good; the copper might have been on from 18 to 20 months. Copper may last 4 or 6 years. I have taken it off of vessels that had been on 4 or 6 years. The copper was taken off so as to caulk the vessel. The copper taken off was not used again. Those sheets of copper taken off cannot be used; it tears it so taking it off that it is condemned. The ship timbers that we cut out were all good and sound. I made no further examination, except where we bored. The
146 borings were good and sound. It was a good old ship. The planking timber, wedges, oakum, oak timber, & yellow pine, spoken of in my bill, were furnished by myself, and the prices set opposite were the market prices at the time of making the repairs. The vessel was recaulked entirely throughout—no, not all throughout; there were some parts we didn't caulk. We did'nt go in to slaughter the owners of the steamboat. I couldn't tell you how many men we had, on an average, at work a day during the repairs. My foreman knows; he keeps those accounts, and hands them in to my clerk.

Adjourned to Oct. 17th, at 3 o'clock.

OCT. 17, 1866.—Cross-examination of Roland W. Griffith proceeded with as follows:

I commenced work on the Margaret Evans Sept. 4, 1865. Work was continued until Sept. 6th, when it stopped, and was resumed

147 again on the 11th of Sept., and we worked on the eleventh; did not work again until the 18th of Sept., when it was resumed again and continued until Oct. 4th. The occasion of the interval between the 11th and the 18th, I presume, was to wait for Mr. Corlie to make up his mind about repairing the ship; my knowledge is that. The occasion of the interval between the 6th and the 11th I cannot answer for. The wages we paid our hired help was the regular-going wages. We have a commission on each man's wages of 40c. per diem, but none on the foreman's. I charge no commissions for my own services. The two items for cartage and truckage was for carting material to the vessel from the yard. We have no truckman. We have no bill of the truckman, *we have no bill of the truckman;* simply a little memoranda every Saturday night. The item of sawing timber is a disbursement which we
148 pay at the mill. Item "cash to watchman" is for watching the copper while the vessel was on the dock. It was independent of any other charge for watchman. We have been paid the amount of our bill, $6,230 76.

Re-direct resumed:

On the 4th of September we had engaged two men, making together a day and a quarter, engaged in nailing board outside the canvass to stop the leak. On the 5th of Sept. we had the same two men engaged in the same business, making two days. On the 6th of Sept. we had the same two men assisting the engineer in cutting away the decks to get the pumps in. The ship was at this time lying at Point Hook, where she was when the collision happened. These two men were set to work by my direction and the captain's. The next work we did on the ship was a day and a half work on the 11th of Sept. The work on that day was stopping the leak with canvass and boards. The ship at this time was at foot of Corlea' street. We next worked on the 18th of September 112¼ days. The ship was then on the dry dock, foot of Pike st.
149 She was towed there by steamboat; don't remember the name of the steamboat; don't recollect whether or not it was the steamer Niagara. The tonnage of the Margaret Evans was about 1,000 tons.

Q. Look at the bill now shown you, and say whether the amount charged—

(Obj. Question withdrawn.)

The first work done towards repairing, after we got her off the dry dock, was to strip the metal off. It was necessary to take off the metal because the vessel had to be caulked and refastened, which couldn't have been done without taking off the metal. It was necessary to take off the metal; also to take off the timber that was broken. Mr. White and son furnished the new metal that was put on the Margaret Evans by us. I have not seen Mr. White's bill until now. I received the new metal from Mr. White and the puncher. I received them from both by telling Mr. White about what metal the vessel would require.
150 Don't know whether the puncher gave me the memorandum taken from the last suit, or how I got it; but I gave to Mr. White information of the quantity required. All the metal furnished by Mr. White was actually used by us on this vessel. My men put this metal on the vessel.

Q. Look at Exhibit No. 1, Mr. White's bill, and say if that is reasonable.

A. It is according to the prices at that time. After stripping off the copper we replaced the old timber with new, recaulked her, and refastened her. Henderson did the blacksmith's work; he rendered a bill to the capt.

Q. Look at the bill now shown you, and say whose bill it is, and for what work.

A. Mr. Henderson's bill, for work done on the ship.

(Bill here produced, and marked Exhibit No. 2.)

I can't tell exactly how long she was on the dock; four or five
151 days I think. There was no unnecessary delay in get her off the dock. We couldn't have kept a larger force of men to work on her than we did keep.

Q. Look at the bill now shown you, and say whose it is, and for what work done.

A. Rosevelt & Griffith's bill; for repairs done to the Margaret Evans.

Q. Does that bill contain any charge for work not rendered necessary by the collision?

(Obj. to by respondent's counsel as leading.)

A. No, sir.

Q. Are the prices charged in that bill according to the market bill for labor and materials, at the time they were furnished?

A. Yes, sir.

(Bill of Rosevelt & Griffith here produced, & marked Exhibit No. 3.)

Adjourned to Oct. 22nd, at 2 o'clock.

152 OCTOBER 17TH, 1866.—Present, commissioner and counsel for respective parties.

Mr. Lord, counsel for libellants, produces FRANKLIN WHITE as a witness, who, being duly sworn, deposes and says:

I am a wholesale dealer in metal; have been 10 or 15 years; the firm was J. White & Sons until 1st of April, 1866. We furnished metal for the Margaret Evans. (A paper produced, & marked Exhibit No. 1, is a bill of the metal furnished to the "Margaret Evans." The items are correct, and it was paid. The amount of the bill was $2,038 84.

Cross-examined by Mr. Owen:

The old metal spoken of in the bill, was that stripped off the Margaret Evans, as is customary, and was credited on the bill, as is customary in such cases. Our firm did no work on the Margaret Evans.
153 Edmunston Brothers ordered the articles mentioned in Exhibit No. 1.

Q. Did he specify the quantities of metals?

A. No; he ordered the suit of metal, and directed us to deliver it to the ship. The bill was ordered of me, but I don't recollect who gave me the order for the quantity, whether it was Mr. Edmunston, the capt., or who.

Q. How much of the metal, if any, went into the Margaret Evans?

A. Our business is finished when it is delivered to the puncher. We know that the entire quantity of the metal that is charged in the bill was delivered to the puncher that punched the vessel. There was a particular quantity of the metal ordered of us; 1,515 sheets was the quantity ordered. The condition of the old metal taken off the Margaret Evans I have no recollection of. I cannot judge of the condition by the price we paid for it, 20 cts.; old metal is all sold for the same. The old metal taken off was yellow metal, no copper. The date of the bill
154 was the date of the purchase; I have no recollection further than that. The articles were delivered on the day of the date of the bill. The old copper was not weighed at my request. The weigher return, annexed to our bill, was furnished to us.

Re-direct resumed:

I don't recollect who the metal was delivered to to punch; it was to either Donnley, or Betts. I remember seeing the Margaret Evans about this time; her old metal was stripped off.

Q. Did you recognize the new metal put on?

(Obj.)

A. I did not make sufficient examination to tell the metal. I noticed she was coppered up new. She was then in the Balance Dock, foot of Pike street. We rendered this bill against the ship Margaret Evans & owners, because the metal was purchased for her.

Re-cross resumed:

155 Our account on our books is the same as Exhibit No. 1.

156 SHAW vs. BRIDGPORT. } Oct. 22, 1866.—Reference.

JOHN S. HENDERSON, being sworn for libellant, says:

I am a shipsmith; I done some work for the Margaret Evans in Sept. or Oct., 1865; I done some bolting. She required bolting on account of damage having been done on her side, and it was to repair that damage. I think she was laying at the point of the hook, at the marble yard, when she received the damage; my work was all done to repair that damage, to the best of my belief. I don't know of anything done except for the damage; there might have been some little thing done that was not required to repair the damage, but I don't think there was any.

(Exhibit No. 2 shown witness.)

This is a duplicate of my first bill, rendered for this work; the
157 amount of it has been paid; I received it of Edmiston Brothers.

Cross-examined:

The captain of the ship ordered me to do the work mentioned in the bill, Exhibit No. 2. The bolts mentioned in the bill were furnished for the vessel, to make the repairs. There are some tools mentioned in the bill, which were furnished to workmen doing the work; the bolts were all actually put into the vessel; I done all the work that the bill mentions. I have charged only for the work that was done in my shop, upon material that went into the vessel; we furnish the material and do the labor.

Q. What knowledge have you of any bolts you furnished going into that vessel?

A. I have the best knowledge of knowing that every one of them went into the vessel, for I done the work, furnished them, and weighed them.

(Objected to as not responsive. Obj. overruled.)

158 I furnished them and delivered them, and saw some of them drove into the vessel; I would not say that I saw the whole of them drove. I furnished the bolts & other materials to the ship-carpenter, & they done work, such as driving, &c. The prices charged are the usual market prices charged for like materials.

WILLIAM B. DUNLEY, a witness produced and sworn on the part of the libellant, says:

I am a copper & metal puncher; I was called in Sept., 1866, to do

work in my line on the ship Margaret Evans; the bill shown me is a memorandum or duplicate of the first bill rendered for the metal punched for the Margaret Evans; I punched 1,515 sheets; I received it from J. White & Son; I delivered it, after it was punched, to Roosevelt & Griffith, for the ship Evans; I delivered it to them at the
159 ship Margaret Evans, at the foot of Pike street, while she was on the dock for repair; my charge was $22 72, and was paid by Edmiston & Brothers; bill is marked Exhibit No. 5.

Cross-examined:

I have coppered her before, & knew what the ship required, and took the same amount I had used before—a little more.

Examination adjourned to the 25th Oct., at 2 p. m.

160 (Indorsed:) U. S. district court, eastern district of New York. George Shaw et al. vs. The Steamer Bridgeport, &c. Copy testimony on reference.

161 U. S. district court, eastern district of New York.

GEORGE SHAW & ANOTHER
vs.
STEAMER BRIDGEPORT, &C.

OCT. 25TH, 1866, 2 o'c'k.—PIERRE D. VAN HOUSEN, a witness produced and sworn on the part of the libellant, says:

I am one of the firm of Van Housen & Brothers; we furnished a watchman for watching the ship Margaret Evans; this is the bill, marked Exhibit No. 6, for $28 50, which we paid.

(The claimants admit the charge of $52 50, for services of steamer Adelia, and $40 for steamer Niagara.

Claimants admit the bill of Thomas Tobin, for running lines, $6, and also that $95 was paid for scraping the ship, but denies that it was necessary from the collision.)

162 JAMES EDMISTON recalled, says:

I paid to the Coast Wrecking Co. $198 13, for pumping the Margaret Evans out after the collision; it was done by steam-pumps. I paid to the Ballance Dry Dock Company for raising the ship $887 20, and I have a receipt for the payment of same, (here marked Exhibit No. 7.) The collision rendered it necessary to have the Evans taken on the dock; the amount of damage could not be ascertained until she was so taken out of the water; I paid Alexander Lander for hauling the ship out of deep water, and for other labor, fixing pumps, shifting cargo, moving shears, taking steam-pump on board, and assisting to rig and take it off again, $413 25. I have a bill which includes these services, and is here marked Exhibit No. 8; I know William Farron, the metal weigher; I paid him for weighing the old metal taken off the
163 ship, $31 10; I paid Ellery & McCartin $409 65 for painting the ship Evans, and the bill is here marked Exhibit No. 9. The ship having been recaulked and new wood work on her, & scraped, she was obliged to be painted; to the best of my knowledge and belief none of the metal bought of White & Son was used, except to repair damage caused by the collision; none of the items charged in Exhibit "A." were, to my knowledge, used for any other purpose except to

repair the damage caused by the collision; I have charged my commission only upon the actual amount disbursement made to repair the damage caused by the collision, except upon the demurrage; I think the $268 47 is charged at the rate of two and a half per cent., and is lower than customary charges in like cases; I procured a new top-gallant sail for the ship, and paid $250 for it; I also bought one coil of rope for the ship; I bought the sail because the old one had been destroyed,
164 as I understood, in stopping the leak, and I bought the rope to replace that which had been cut up and destroyed in towing her, &c., after the collision.

Cross-examined by Mr. Owen:

I know that the work was performed on the ship, of which I have testified as having paid the bills for; I know it from having visited the ship during the repairs; I did not superintend the work closely; I was at the ship sometimes once, and sometimes twice a day; I generally called there in the morning as I went to my office; I have no practical knowledge of what work was rendered necessary by the collision; to the best of my knowledge and belief, I believe that the work done the vessel was rendered necessary by the collision; the only knowledge I have of the necessity of the work being necessary was from my visiting the ship, and the report of the port wardens upon their survey
165 of the ship; I have not compared the port wardens' report with the work performed on ship very closely; the cabins inside were not painted, only where she was caulked & scraped where repairs had been done.

Re-direct resumed:

I saw the Evans about ten o'clock on the morning after the collision happened, at the time they were at work stopping the leak on the side; she had then been hauled up on the mud. The water, as at high-water when the collision happened, was over twenty-two feet deep. I have been engaged and connected as agent for ships for eighteen years, and during that period I have had charge of vessels; made repairs. I have practical knowledge sufficient to say, that it was absolutely necessary to bring the Evans up from where I saw her first, into the mud. I have sufficient experience in those matters to enable me to say that
166 we adopted what I considered the most expedient manner of repairing her, and that there was no way to get the water out of her except by steam or hand pumps, or bailing. I was present when they were trying to fit the pumps, and the capt. forbid them to cut the decks; but the could not fit the pumps except by cutting the decks. I think the extent of the damage could not be ascertained, except by taking her on the dock. I have sufficient practical knowledge of those matters to enable me to say that the Evans could not have been got to the dock without a steamer. I saw the vessel while she was being scraped. All below the water-line and up to the chain-plates, and wherever she was caulked, I understood was scraped. I saw her caulked and scraped in places. I can't say whether I saw her caulked and scraped in places up to the decks; but I did see them caulking and scraping in places up to the chair-plates. I don't *I don't* think it would
167 look well to see a vessel painted partly, and partly not painted on the outside. The entire hull of the vessel was painted. The Coast Wrecking Co's bill of $198 18 was not paid until after I had submitted the bill to proper persons as to the propriety and justness of the charge.

Re-cross:

I think during all the time the repairs were going on, the capt. of the Evans was in attendance, and I think the mate and cook, and boy and watchman, were also there during the repairs.

Re-direct:

I don't know where the capt. & mate are now; the capt. left after the repairs. The capt. lives in Yarmouth, and I don't know where he is now. Before engaging the Balance Dock Co., I went to all the docks, & only went to the Balance Dock because they could take her on first. They all charge the same price per ton for like services rendered of raising, &c.

168 Examination adjourned to 29th Oct., at 3 o'clock.

U. S. dist. court.

SHAW *vs.* BRIDGEPORT. } Oct. 29th, 1866.

JOSEPH F. ELLERY, being sworn for libellant, says:

I am port warden of the port of New York. I remember the Margaret Evans about one year ago receiving damages while lying at the foot of Corlies street, New York. I examined her before the damage in discharging her cargo; her condition was good. She turned her cargo out in good order until the damage. Her cargo consisted of citron, rags, &c. I saw her after she received her damage—the morning after. I recommended them to use steam-pumps, on the first survey, to get the water out. I also recommended them to put some plank and can-
169 vass on the outside to stop the leak, in order to keep the water out to enable them to discharge cargo. I then recommended them to place her on the dry dock for further survey. I saw her when she was on the dry dock; she appeared to be badly strained. I found a number of planks and timbers, and streaks of ceiling broken; also, some clamps, water-way, rail, & plank-shire. I think also one or two deck beams were broken. All of this was on the forward side, just abaft the forerigging. On the port side all the knees were started, and the vessel was strained badly in her upper works. I recommended, in addition to what I have stated above, that she be tre'nailed, copper stripped, and to be recaulked from keel all over; also, refelted and mettalled. All of these repairs were necessary to make good the damage I saw which was occasioned by the collision. I examined her after her repairs were completed; there was no repairs made which were
170 not necessary to repair the damage occasioned by the collision. The copper would have to be taken off in order to refasten her, and for the same reason she would have to be rescraped. I recommended the copper to be removed in order to recaulk and retre'nail her. She was repainted after the repairs; she did not need repainting before she received the repairs. It is always customary where a vessel is recaulked all over, to repaint all over. The surveyor and myself went all over her after the repairs, and during the time of the repairs, and found her all sound.

Cross-examined by Mr. Owen:

Have been port warden one year & a half; before that I followed the sea some ten years as first officer; never have been master. During the ten years I was in various capacities, from cabin boy up. The

171 request to make the survey was left at the board of port warden; I don't know by whom. I know of my own knowledge that the work was done that I recommended. I am obliged to do that in order to enable them to get their pay. I have to give a certificate that the work is all properly done. I gave the certificate in this case. I have had no experience in repairing ships, but have in building new ships. I had some experience in my uncle's ship-yard at Essex, in the State of Massachusetts. I could not state what would be the fair value of the repairs on the Evans, unless I had made a special estimate at the time.

JAMES MCCARTIN, a witness produced & sworn for libellants:

I am a general painter. I done some work on the Margaret Evans in Sept., 1865. She had been stove in I believe; by some other vessel I believe.

Q. Did you do any work on her that was not necessary to make
172 good that damage?

(Defendant's counsel objects that witness has not shown any knowledge of what damage was done; and 2d, he is called upon to give an opinion without giving any facts upon which to base his opinion. 3d. That the question is leading. Obj. sustained.—EX'R.)

Witness (being shown Exhibit No. 9) says:

It is a statement of the work we done on the Evans, and the same was paid. I remember she was stove in the side; her bulwarks injured.

Q. Did you do any work on her that was not necessary to make good that damage?

(Obj. Question withdrawn.)

Cross-examined:

I cannot state without reference to the bill, Exhibit No. 9, what work we done. I don't remember whether we painted the vessel entirely inside & out; by looking at the bill I can*not* state particularly
173 what work we done.

Re-direct:

We done as much work as is stated in that bill.

Re-cross:

Q. On being shown Exhibit No. 9, or from your own recollection, can you state exactly what part or portions was painted by your firm?

A. She was painted all over outside and inside. I think all of the bulwarks and everything on her deck. I include in this all the cabins on the outside.

Adj. to Oct. 31st, at 3 p. m.

174 U. S. district court, eastern district of New York.

GEORGE SHAW & OTHER
ag'st
THE STEAMER BRIDGEPORT, &C., &C.

OCT. 31ST, 3 o'clock.—Present, commissioner & counsel for respective parties.

Libellants' counsel produces JOHN P. JONES as a witness, who being duly sworn, deposes and says:

My occupation in Sept. & Oct., 1865, was an inspector of the Columbian Marine Ins. Co. I inspected the Margaret Evans at this port in

the summer of 1865. She was in good condition considering her age, and the voyage she had made. It is a part of my duty to go and see vessels when they come in so as to put down their condition in the company's books. I remember seeing the damage done to the Margaret Evans by the Bridgeport running into her. I went to
175 examine her after that damage, by the direction of the president of the company, I think; I won't be positive. I was told our company had an interest in the Margaret Evans, or else the company would'nt have sent me to examine her. She was damaged as follows: She was run into between the fore and main rigging and the outside plank was broken, the timbers ceiling, plank-sheer, water-ways, and some knees were broken; and, I think, there was a beam or two gone. The damage was on the starboard side. The port side was next the wharf and injured by the concussion, and had to be refastened and fixed up. She could not have been refastened below the copper without first stripping the copper off. In my opinion it was necessary to take off the copper so as to get her in a seaworthy condition. I was present at one time with Mr. Griffith, and stated to him what I thought ought to
176 be done. I went and examined her after the repairs were completed, at my own suggestion, it being understood that an inspector will keep track of these things, so that when an adjustment is made nothing shall be put in that doesn't belong there; by this, I mean, work not rendered necessary by the collision. I do not remember that I discovered any unnecessary work at such examination.

Cross-examined by Mr. Owen:

I saw some of the bills rendered for the repairing of the Margaret Evans. I can't call to mind at the present time that I made any examination of these bills. Extra work might have been put on the Margaret Evans without my discerning it. When I make examinations I make no report verbally, except what is put in the books of the Insurance Company. I think the Margaret Evans was insured in our company. I can't tell whether our company has paid anything on account of the collision.

177 E. H. R. ELLERY, a witness produced on the part of the libellants, being duly sworn, deposes and says:

I am a ship-painter. I was a ship-painter in 1865. The firm was then Ellery & McCarter. In that year we performed work on the Margaret Evans.

Q. Look at the bill now shown you, marked Exhibit 10, and say if that is a statement of the work you did?

A. Yes, sir; that bill is correct. I remember the Margaret Evans sustaining damage before this work was done. When I took hold of her there was new work inside and out. It rendered it necessary to have the new work primed and white lead , and then two coats of paint all over inside and out. There is nothing in the bill, Exhibit 10, which was not rendered necessary by the work done on her. There was four days' work left out of the bill by the mislaying of my time-books. We can't patch paint so as to make it look as good as before.

178 Cross-examined by Mr. Owens:

The vessel was painted throughout except the state-rooms. There was no cabin work done. The paint on the old work looked very well. It had been on, I should judge, 4 or 5 months. Paint on a vessel for

that length of time only, ought to be just as good as new. The reason of my repainting the entire work was because of the jointure of the new and old wood; there was new work on the outside of the cabin. The entire deck was re-caulked, and there was a new sky-light put on which had to be painted.

RICHARD HOPPS, a witness produced and sworn on the part of libellants, deposes and says:

179 I am a ship-carpenter. I was such in 1865. I was in the employ of Roosevelt & Griffith most of the time in 1865. I remember doing work on the ship Margaret Evans, in September & October, 1865. The ship had been run into, and been badly damaged. She was crushed from the plank-sheer below the copper. Her planking was crushed in, her timbers broken, her water-ways broke in two, and deck-knees were broken, and some of her ceiling & clamps were broke in also. She was strained on the port side from the concussion of the blow of the steamboat. Our foreman on that job, was James Chase. I was there while the repairs were being made. No work was done that I saw, but what was really necessary to make a good vessel, a good job, and repair the damage and make her as good as she was before. Work was done inside as well as outside. We had to take the ceiling out. We had to put tre'nails in her. We put those tre'nails in the new work, and then we have to shift them fore and aft from the break. We put them a ways below the copper, but I can't recollect now how far.

180 Cross-examined:

We put new timbers where the break was. We put plank on the outside from the plank-sheer to the copper, about 25 feet each side of where the break was. We had to put hanging knees, deck-knees, and water-ways into her. We put in four hanging knees. I don't recollect more than two deck-knees, (between two and four,) new ceiling, & clamps inside above and below decks, about 25 feet each way from the break, to make a good shift of butts. We had to lay 4 or 5 planks for new decks; that embraces the main parts of the job, but I can't call to memory all; this is the principal part of the job, the rest were smaller and minor matters. There was no repairing of the old; all we did was to put in the new work.

Re-direct resumed:

181 There were 4 knees taken out below, and two or three between decks. They were hanging knees below & between decks as near as I can recollect. We had to put other knees back. We had to put in 4 hanging knees below & two or three hanging knees between decks, and from two to four deck-knees.

WILLIAM WELTON, a witness produced and sworn on the part of the libellants, deposes and says:

I am a caulker, and was an apprentice caulker in Sept. & Oct., 1865. I did some work on the ship Margaret Evans in the fall of 1865. The ship was stripped, caulked, and coppered. I am almost certain that Mr. White sent down the copper. I can't say that all the copper that was sent down was used on the ship. She was recoppered entirely with new copper.

Cross-examined:

There was a delay in receiving the copper of about half a day or 3 or 4 hours.

182 U. S. district court, eastern district of New York.

GEORGE SHAW ET AL.
vs.
THE STEAMER BRIDGEPORT, &C., &C.

Respondent's testimony.

DECEMBER 11TH, 1866.

Mr. Owen calls as a witness JOSEPH M. VAY, who being duly sworn, says:

I reside in New York; am a ship-carpenter; I was such in 1865. I know the "Margaret Evans;" I saw her in September, 1865; I can't exactly tell the day; it was the next day after the collision, or day following. She was then lying at the foot of Corlears street; she lay alongside of the inside bulkhead. I went or board the vessel to see the damage, and what it would cost for repair it.

Q. State what examination you made.

A. I went aboard the Margaret Evans, and from the Margaret
183 I went aboard a sloop or barge alongside. I examined the break of the Margaret Evans and the number of streaks it would require to repair it—19. I then went inside the vessel, in the vessel hold, and examined the ceiling, and what it would take to repair the ceiling; and went on the lower deck. Found the deck broke, ceiling, water-way, & likewise the clamps that held the upper deck. It was necessary to take down 3 or 4 hanging knees, and also necessary to take out one lodging and one bosom knee. That's about all that it was necessary to take out. I made an estimate after that what it would require to repair the vessel. I estimated the oak timber at 96 cents per cubic foot; pine timber, 72c. per cubic foot; the knees, a dollar an inch, that is in thickness—a knee ten inches thick $10, spikes and such like—spikes at that time 11c. a pound; bar iron for bolts, 9c. a pound; day's wages
184 for men employed $4 75 per day. With that, I concluded I could repair the vessel for $2,500, including everything, excepting caulking, taking her on to the dry dock and coppering. I would, or considered that amount would, put the vessel in as good condition as she was before, as far as the carpenter's work was concerned. It was necessary to repaint the new work that would be put on over the break, but not beyond that.

Q. Is it usual or customary in repairing damages to vessels to repaint other parts than that repaired?

A. It lays with the option of the owners; when they require thorough repair, to repaint her throughout.

Q. I am not speaking of thorough repair?

A. Where a collision or accident, it is customary to repaint the new work that is necessary to repair the break.

Q. From the examination you made of the vessel, state if, in your opinion, the vessel was so strained in the port side as to render it necessary to refasten her, recaulk, and recopper her?

185 A. I did not think it did, [or I could not have proposed to do the work for that amount.]

(All in brackets objected to by def'ts' counsel as irresponsive.)

Cross-examined by Mr. Lord:

I made this examination at Mr. Corlies' request. I was putting the floating derrick in operation that belongs to George Quintard, when he

requested me. In the evening he sent for me to see the vessel next morning. I went to see the vessel next morning.

Q. Where was your shop at that time?

A. did not have any. I resided at 265 Sixth street, New York. I had no place of business, except where I resided. I did not occupy the whole of the house where I lived; I occupied my room and bed-room. I am a single man. I had workmen in my employ; they were at
186 work on the derrick, and some had worked on the Bridgeport. The principal part were on the derrick. I had two men at work at Mr. English's, building a gallows for steamboats. I had six men at the derrick, I think. I don't think I had any at the Bridgeport. I think I had got done work there. I paid my men off every week, Saturdays. They came sometimes to my house to be paid, and sometimes at the corner of 4th street & Lewis, Mr. Young's hardware store. I kept a bank account at the Dry Dock Saving Bank. They allow interest on deposits. I can draw money every day in the week, but can't draw checks. When I want to draw money, I have to produce my pass-book.

(All this testimony objected to by Mr. Owen, def'ts' counsel.)

Q. Did you keep any other bank account?

A. I had money deposited in another savings bank.

Q. Did you keep any in any bank other than a savings bank?

187 A. No, sir; I am now a ship-carpenter. I have no shop of my own. I have been in the employ of another ship-carpenter. The last work I done was in the employ of another ship-carpenter. I have known Mr. Corlies since 1855, I think—might be longer. I have done work for him before. I don't know whether I did all the work he required or not, but did work whenever he sent for me.

Q. Do you know of any other carpenter that works on Mr. Corlies' boats?

A. Yes; I have worked for the boss carpenter Mr. Lugar, who has done work on his boats. Mr. English is also another carpenter that works on his boats. I know of no other carpenter that works on his boats. So far as my knowledge goes, all the work done on Mr. Corliers' boats has been done by Mr. English, myself, or Mr. Lugar. When I went to examine the Margaret Evans in the morning, it
188 was between 8 & 12 o'clock. I reported my examination to Mr. Corlies. He was not with me when I made . There were some men, I think, discharging marble on board the Margaret Evans when I went there. She was lying alongside the inside bulkhead. She was made fast to the bulkhead. I think the port side was next to the dock, but it was so long ago, I can't say certain. She had cargo in her hold; I couldn't say how much. I didn't go to examine the cargo; I went to examine the brig. I didn't observe how much water there was in her; there was not a great deal. There was not a steam-pump on board to my knowledge. It is so long ago, I can't exactly say. I did not see any on board, or any in operation. She was a ship, I think; I did not notice particularly. She might have been a bark; I rather think she was a ship tho'. I am sure she wasn't a brig. She was afloat, I should judge. I don't
189 know the depth of water there, so I can't tell whether she was afloat or touching the bottom. She was out of water the usual size of ship of her size, probably 15 or 16 feet; I could not exactly tell. Don't know how big a ship she was. I mean 15 or 16 feet from her rail. This sloop I got aboard of lay outside of the Evans. She was laying next to the pier, & this sloop next to her. Can't say what the sloop was doing there. I went across the Evans, and got over the rail on the sloop. She was close alongside, her bow extended between the fore and mis-

sen chains, and the body of the sloop laid abaft of the Evans, as near as I can recollect. The Evans was pointed up stream—sloop was pointed up stream, as near as I can recollect. Was employed about one hour and a half making the examination. I offered to do it for this price. I can't say how many vessels I have repaired. My work is princi-
190 pally on steamships and steamboats, and contract work on new boats before they are launched. By contract work, I mean contract with other ship-builders; what we call sub-contracts. I can't give the name of any square-rigged vessel that has been put in my hands to repair, nor any fore-and-aft vessel. The paint on a vessel that is repainted will look brighter on the new work than the old. I would consider a vessel properly painted where one part of the paint looked brighter than the other. I can't name any square-rigged vessel that was only partially painted after repairs, nor of any fore-and-aft-rigged vessel.

Q. Did you mean to say, on your direct examination, that when vessels were repaired externally, it was usual only to paint the new work?

A. Where a collision or break occurs, it is usual only to paint the new work, as far as I have ever known. I have seen the Bridgeport, Elm City, City of New London, & other vessels—don't recollect their names—so painted. These vessels are all steamboats; can't see
191 any difference between steamers and sailing vessels in relation to this matter. A portion of a steamboat's body is covered by a guard; the forward part is not covered, probably thirty feet. The guards of a steamboat are above the water according to her size; the largest steamboats' guards are above the water probably six or seven feet, and about the forward gangway. The forward gangway in the largest boats I have named, would be seventy-five or eighty feet from the stern; may be more or less; never have seen a steamboat sent out as thoroughly repaired without being painted all over. I would consider the Evans thoroughly repaired without being painted all over, so far as the damage is concerned; I mean to say to repair the damage, by repairing it, and putting it in as good order as before.

Q. Would you consider such to be thorough repair, as far as her paint is concerned?

A. Yes, sir.

192 Q. How much oak timber did you consider necessary to complete her repairs?

A. I don't know; that has slipped my memory, it is so long ago; could not say how much pine timber, it is so long ago; nor spikes or bolts, it is so long ago. I estimated from hanging knees; one lodging and knees.

Q. How did you come to the conclusion she required no repairs on the port side?

A. I did not examine the port side, only examined where the damage was done. The damage was done between the fore and mizzen chains. I think the break was between the main & fore chain. It was 2 years ago, and I don't exactly recollect.

Q. How far down did it extend?

A. To below the water-line, and was covered with a piece of canvass.

Q. How far below the water-line?

A. Not so as to cause any great leakage; couldn't exactly say how far. Her between-decks were broken, her lower deck was broken; the upper deck I don't think was broken; I am not quite certain.

193 Re-direct resumed:

At the time I estimated the cost of the work to be done, I also

estimated the amount of materials to be used. I made a memoranda, which was destroyed. I have been a ship-carpenter 30 years.

Re-cross resumed:

James Murray was my partner. The estimate was done on the deck, & then taken to Mr. Corlies. That estimate included no work except where the break was.

Re-direct resumed:

Q. Did that estimate include all work necessary to be done to repair the damage occasioned by the collision?

A. That is as far as the carpenter's work is concerned; the caulker's work is not included.

Re-cross resumed:

I never took any particular notice of the Evans before the accident; I knew nothing of her condition before the accident.

Adjourned to Dec. 13th, 2 p. m.

194 U. S. district court, eastern district of New York.

GEORGE SHAW ET AL.
vs.
THE STEAMER BRIDGEPORT, HER TACKLE, &C.

GEORGE M. CORLIES, a witness produced and sworn on the part of the claimants, says:

I am a steamboat agent; agent of the steamer Bridgeport. I have been connected with steamboats 30 odd years. I know the collision between the Bridgeport & the Evans; I saw the injuries at 11 o'clock of the day of the collision. I examined the nature and extent of the injuries the Evans rec'd. I went aboard of her; her timbers were broke and splintered between two knees, just about the water-line; I mean by knees, the knees that hold up the deck-beam. The character of the in-
195 jury was a pressing in of the timbers. I saw a tier of marble in the hold. I saw no water, but a little down in the run. There were two marks in the marble; one where there was an old stain, and one a new stain, where the water had got a little higher. I saw the Evans twice before the repairs commenced. I don't think I know Mr. Edmonston; should not if I should meet him in the street.

Q. Did you have any conversation with Mr. Edmonston at any time, in respect to the repairing the Evans?

A. A gentleman called on me, representing himself agent of the ship, two days after the collision; I think he said his name was Mr. Emerson.

(Libellants' counsel objects to any conversation of any agent, unless agent is identified.)

Q. Question by the commissioner:

Q. Did any other person except that one person, come to you and represent himself as agent of the Evans?

196 A. No, sir.

(Mr. Lord repeats objection to as to any conversation of the person who witness designates as agent. Overruled.—EX'N.)

Q. State the conversation which passed between you and said agent, in respect to the repairs?

(Obj. Overruled.—EX'N.)

A. He asked me if I had seen the damage. I told him I had, and that

I did not think it amounted to a great deal. He said they would have to unload the ship to see if she was hurt under water. I told him I would look at her after she was unloaded. He called on me, or the capt. did, on the day she was unloaded. I told him they had better repair her themselves. I can't fix the day; I think it was within a week after the collision; I won't be positive; I do not think I had any conversation with this party.

Q. Are you certain?

A. I think I did not.

197 Q. You have detailed all the conversation that took place at the times you speak of, in respect to the repairing of the Margaret Evans?

A. Yes, sir; I know one of the firm of Roosevelt & Griffith; don't know which one; the one with the black whiskers, who was at court the day of the trial of this case, and examined; I had conversation with him the next day after the collision, about the repairing of the Evans; he wanted to do the repairs.

Q. Did Mr. Griffith, in any conversation with you, state an amount for which he would do the repairs? If so, state when, where, and what the amount was.

A. If Mr. Griffith is the person that was examined at the trial, he did fix the amount, after examining the ship, at my request; it was on my wharf, three days after the collision; the amount was $3,000 to do the repairs, and if she would have to be hauled out on the dry-dock

198 to do the repairs, he fixed $3,500 as the amount to put her in as good condition as before the collision.

Q. Did you tell Mr. Griffith, in reply to any question of his, that he might attend to making the repairs, that "you didn't know anything to the contrary?"

A. No, sir.

Q. Did you ever say to Mr. Griffith that you would let him know when you were ready?

A. No, sir.

Cross-examined by Mr. Lord:

Capt. Weeks and others were owners of the Bridgeport at this time; Robert Payhadock & Roswell Graves are the others.

Q. Had you any interest in said steamer?

A. No, sir; no more than agent.

199 U. S. district court, eastern district of New York.

GEORGE SHAW ET AL.
ag'st
THE STEAMER BRIDGEPORT, HER TACKLE, &C.

RICHARD POILLON, a witness produced and sworn on the part of the claimants, says:

I am a ship-builder; I have been such 25 years. I knew the ship Margaret Evans since she was built, about 15 or 16 years ago. I remember a collision between her and the Bridgeport; I made an examination of the injuries of the Margaret Evans within two or three days of the accident; I went on board of her for that purpose. I was between half an hour and an hour in making the examination. I made up an estimate what it would cost to make the repairs; I have the estimate here, made at that time. In my opinion it would have cost

200 about $4,000, exclusive of painting & coppering, to have placed the Margaret Evans in as good condition as before the injuries. In my estimate, I estimated 4 upper parts of the frames, from the water to the plank-sheer; 20 streaks of plank outside; 2 clamp streaks inside; 4 streaks of ceiling; 3 water-ways; 4 streaks of deck plank; 6 deck-frame knees. All of this work, with the exception of the outside work, was for the between-decks, and the following in the lower hold: 2 clamp streaks; 4 streaks of ceiling; 6 deck-frame knees; 7 hanging knees; together with the necessary tre'nails & bolts that would be required to fasten such work, and caulk the ship's topsides entire, on both sides. Also, included, dock hire for taking ship out of water, the
201 joiner's work, and blacksmith's work, which all amounts to $4,086 00. From the examination I made of the Margaret Evans at that time, it was not necessary, in my judgement, to recopper her, because the ship was struck by the stem of the steamboat, directly between the deck beams, which would cause the side of the ship to be crushed in, without materially affecting the strength of the ship in other parts. The injury on the Margaret Evans was in the most favorable part of the ship for making repairs, and for making a close estimate, being all straight work. It was not, in my judgement, necessary to recaulk the ship throughout, for the same reason I have mentioned before, as to recoppering her. It would not be likely to affect the seams of the ship, either on the top or bottom of the ship; if she had been struck directly opposite her beam, I think it would have been
202 necessary to recaulk her all over; she was struck between the beams, not on or opposite a beam. In the latter case the tendency would have been to have racked the vessel, and made it necessary, perhaps, to recaulk her. 1,700 lbs. of sp'r oakum is a much larger amount than we have ever used in caulking similar vessels of that size. I estimated 350 days for the caulking and carpenter's work.

Q. Look at the paper now shown you, and state what it is.

A. It is an estimate that I made very carefully, at or about the time of the collision, as to what would cost. Upon this estimate, I gave an estimate to Mr. Edmonston, which might have differed from this in a small amount. I saw Mr. Edmonston with a view of doing this work, and he asked me to make an estimate; and I saw him afterwards, and he told me they had decided to do the job by days' work.

203 (Paper here marked Exhibit 1, for claimants.)

Cross-examined by Mr. Lord:

The ship was at foot of Corlear street, when I examined her; she had some marble in her, lying at the bulkhead, port side to the shore, close; there was a very small vessel lying outside of her. I made this examination at Mr. Corlies' request. I think I reported to him the result of my estimate; I am not positive about that. He did not suggest my going to Edmonston; I knew Edmonston. The damage was on the starboard side, and my estimate did not include anything on the port side, except caulking above the copper; it did not include coppering. It is customary to repaint a vessel entire, where she is recaulked entire. A streak of water-way averages 35 feet in length; the 3 water-ways were cracked sufficiently to make it necessary to take them out.
204 These water-ways were about 14 inches square, (for 1 of them,) and the two others about 8 by 14, or thereabouts. The large piece is laid on top of the beams and against the timbers; the next lays flatways on the beams; and the next to that on the timbers; the timbers project above the beams about seven feet. The first beams are

butted up against the timbers; the water-ways are fastened to the beams with about inch bolts, the next with about $\frac{7}{8}$th bolts, and the next also. The beams had fastened to them two water-ways, one 14 inches thick, bolted with inch bolts, and the other 8 by 14, with $\frac{7}{8}$ bolts. The ends of the beams rest against the timbers. 4 timbers were broken; they were about 9 by 8 inches. Clamp streaks are for the beams to rest on; they are set vertically. I made an examination of the port side, all I desired to, from the dock, and also from the inside, but I saw no
205 appearance of a strain. It depends upon the nature of their injuries, whether it is difficult to estimate the repairs. In this case it was not difficult; it struck the square side of the ship. She had water in her at the time I made this examination. I think up to the top of her keelson she had marble, and some bales of rags in her. There was no steam-pump on board then. My estimate was made on the 4th or 5th of September. The damage to the port side would not depend, in any measure, on the rate of the speed of the steamer, for the reason of the position in which she was laying, and the character of the blow.

Q. Do I understand you as saying that the damage to the opposite side, from the blow, would be just the same, whether the steamer was going fast or slow?

A. If she was struck between the beams, as in this case, it would make no material difference, if done by a sharp steamboat.
206 The water-ways of the Margaret Evans were not cut through.

Q. If a sharp steamer ran against a vessel moored to the wharf, at high speed, would she be likely to do more or less damage than if she was run against her at low speed?

(Obj.)

A. If run at high speed, she would do more damage to that part of the vessel which she struck, and she would be likely to do more damage to the opposite side. But it depends on the nature of the blow. If the blow came on the ends of the beams, she would be likely to do more damage to the opposite side, but if the blow came directly between the beams, it would make no material difference whether she ran fast or slow, presuming it was a sharp steamboat. A sharp steamboat makes a quick break, particularly where the strength of the timbers is
207 impaired by age.

Q. If the steamboat had struck the head of a beam on the starboard side, how would it have damaged the port side?

A. The beam being in contact with the opposite side would be pressed over, and probably break the knees which connect the opposite side of the beam to the ship.

Q. Would it do so whether the ship were pressed against the dock or not?

A. I think it would make but little difference, as the resistance from the water, caused by a sudden blow, would be almost as great as from a solid substance.

Q. If the steamboat had struck the head of the beam on the starboard side, and pressed the Evans against the dock, would it not have damaged the port side?

A. It might or might not. I couldn't say that it wouldn't. It could do no material damage, I would say that.

208 Q. Is not the pressure against the dock sufficient to break these timbers when the steamboat ran against her?

A. No, sir; I think the damage would have been just as great if she had not laid alongside of the dock.

Q. You did not see the accident?

A. No, sir; I can't tell, except by inference, what the character of the blow was. I know Roosevelt and Griffith. They are respectable people. They are our competitors in repairing ships. There are about 30 others in the business in New York.

Re-direct resumed:

From our experience we can tell or infer the character of a blow by seeing the damage.

Re-cross resumed:

I mean to state in my examination that I did not think the port side damaged, because I did not consider that, from the nature of the
209 blow, she could be damaged on the port side; and I also examined her on the port side, inside and out, and could see no damage. A vessel could be forced against the wharf so as to damage the side next the wharf. She might be so damaged when struck between the beams, but I have never seen any so damaged.

Q. How do you know that the force of the blow received by the Evans was not sufficient to rack the opposite side of her against the wharf?

A. I judge from the nature of the blow and personal inspection.

Re-direct resumed:

Q. Suppose the Bridgeport, at the time of the collision, had been proceeding at a speed just barely giving her headway, would the nature of the blow been such at the place where she struck as to have in any way damaged the opposite side?

210 A. I should think not.

Re-cross resumed:

Q. If she were going slowly would she not be more likely to damage the opposite side of the Evans if she struck her at right angles between the beams than if she was going fast?

A. I should think not.

211 *Libellants' testimony on rebuttal.*

U. S. district court, eastern district of New York.

GEORGE SHAW & OTHER
ag'st
THE STEAMER BRIDGEPORT, HER TACKLE, &C.

WILLARD HALL, a witness produced and sworn on the part of the libellants, says:

I am a shipwright; have been a shipwright 28 or 29 year since I first started; I have been a master shipwright since 1843. During this period I have resided in Damariscotta, Maine, and Bath, Me., and New York City. I have carried on business in the city of New York since Oct., 1859. I have had experience in repairing vessels. Since I have been in New York I have been engaged exclusively in repairing vessels, and have not built any. Before I came to New York I was engaged wholly in building vessels. I have seen instances of vessels being damaged by collision on one side, being damaged also on the other
212 side by the concussion. It is possible that a blow struck on the starboard side of a ship may also damage the port side.

(All of the above testimony obj. to by claimants' counsel. Res'd.)

In such a case the damage to the port side would be occasioned by

the concussion of the deck and beams. If she was struck on the end of the beams the damage to the opposite side would be more than if she were struck between the beams, but if she were struck between the beams the opposite side might still be damaged, more or less. I should think the damage would be more, somewhat, if the vessel were moored against the dock than if she were in the open sea. I recollect casses where a vessels in the open sea having been struck on one side which started the other side so as to require refastening. The name of that vessel was the brig Kentucky. I think the Kentucky was struck on the port side. There were repairs done to the starboard side of that
213 vessel. She was refastened through with tre'nails, and hanging knees put in. I think the side of the Kentucky that was struck was crushed in by the blow. If my memory serves me right, this blow struck a little on the end of the beam, and glanced off between the beams, and cut the timbers in several feet. I was told that collision occurred *at* the open sea. I was not present. The Kentucky was re-coppered all over, I think; I will not be positive about it, however. R. & C. Poillon made the repairs to the Kentucky.

Cross-examined by Mr. Owen, counsel for claimants:

The effect of the blow to the opposite side by concussion is dependant upon the speed of the colliding vessel.

Question by com'r:

Q. If the speed of the vessel colliding is sufficient to cut through on one side, would it have any effect on the other side?

214 A. It would. If you strike between the beams you strike against heavy stringers, which carries the concussion to the other side. If you strike on the beam, it might drive the other end of the beam through the vessel without producing so much damage generally. That is my opinion.

Q. If a sharp steamer, going at barely speed to keep headway, runs against a vessel moored to a wharf, striking between the beams, not a sharp blow but a dead, blunt blow, crushing the timbers more or less in, would she be likely to do much damage to the opposite side?

(Obj. reserved.)

If she received a blow sufficient to crush her timbers, it must be sufficient to affect the opposite side; or, in other words, a blow sufficient to crush the timbers would affect the opposite side. I know the Margaret Evans. I saw the damage she sustained partially. I did not examine her *throughly*. I saw her from the outside; did not go inside. I
215 made no particular examination of the Evans with a view of repairing her. Well, somewhat I did; but when I learned that she was in the hands of other parties to repair her, I did not examine her so well as I would if she had not been in the hands of other parties. They were not repairing her when I saw her. I saw her the next day or second day after the collision. I did not make up any estimate of what it would cost to repair her. I did not form any idea in my own mind of what would be the probable cost of her repairs. I only examined the place of the injury from the outside. I took a casual look at it, that is all. I could only see the port side of her by looking over the side of the rail. I didn't get down to look at it. I think the Kentucky collision took place down by Sandy Hook. I am not certain.

(Mr. Lord, counsel for libellants, states that the name of the colliding vessel was the steamship China.)

From the character of the blow which the Kentucky received,
216 I cannot judge of the speed of the colliding vessel.

Re-direct resumed:

I think I noticed on the Evans' starboard side that she had been crushed by the collision; I think her damage in her starboard side was a little abaft of the main-rigging, where she had pressed up against a large fender, and her stern was depressed.

Re-cross resumed:

That was all I noticed. I noticed also the starting of the tre'nails around the fender was hanging. I noticed this damage for only a few feet. I cannot say the number. I noticed a number of tre'nails of which the ends were sticking out; that is all the damage I noticed on the starboard side.

Adjourned to March 11, 1867.

MARCH 11TH, 1867, 3 o'clock.—Present, commissioner & counsel for respective parties.

217 Mr. Lord, counsel for libellants, produces as a witness AUGUSTUS F. BERRIAN, who being duly sworn, doth depose and say:

I am a ship-carpenter; my firm is Witlock and Berrian; that firm has been in existence about thirty years. I have been engaged in business as a shipwright 43 or 45 years; I have had considerable practical acquaintance with that business. Our firm has been principally engaged in repairing vessels. It has been exclusively repairing vessels since we have been a firm. I have had occasion to repair a great many vessels which had been damaged by collisions.

Q. What is the ordinary effect of a blow in your experience, striking a vessel at broadsides on the side opposite to that which is struck?

(Obj. to by claimant's counsel. Res'd.)

A. That would depend something on whether the vessel came square on or a glancing blow.

Q. What would it be if the colliding vessel came square on or nearly so?

218 A. I have seen it in my experience equally as bad, and in some instances I have seen it worse on the opposite side than on the side which was struck.

Q. Would the effect on the opposite side be avoided if the colliding vessel struck between two beams, but with force enough to break in the side?

A. No, sir; it wouldn't be avoided if the vessel was a perfectly sound vessel; if she were not perfectly sound the colliding vessel would bury herself in, without starting it so much on the opposite side.

Q. Would the force of the blow, if great enough to break in the side of a sound vessel, produce any less effect on the opposite side, if the colliding vessel were going slow, than if she were going fast?

A. I think not.

Cross-examined by Mr. Owen, counsel for claimants:

219 I have seen the Margaret Evans a great many times; I first saw her about the time she was first built, perhaps ten years ago. I don't exactly remember. I don't know her age; she must be pretty well advanced in years; she has never been in our yard for repairs; I

have never made any examination of her at all as to whether she was sound or unsound; I saw her an hour or so after her collision with the Bridgeport; I think I was passing in the cars and some person called my attention to her as we were passing; that is all I saw her at that time.

Q. When a vessel is struck by the stem of a steamboat directly between the deck beams, would not the blow cause the side of the vessel to be crushed in without materially affecting the strength of the ship in other parts?

A. If the ship was perfectly sound, it would not.

Q. Would it materially affect the seams of the ship either top or bottom?

220 A. In my judgement it would affect both; it would not make any difference whether the vessel were sound or unsound, for if she were unsound she would be less able to resist the blow, and consequently it would shatter her more.

Q. Suppose the vessel struck was moored at a wharf, would the effect of the blow be as severe as if the vessel struck were under headway at sea, the blow being on the side?

A. I think it would be greater, sir; more liable to damage her than if she were afloat.

Q. In such a case would the speed of the colliding vessel in your opinion affect the strength of the blow, and the damage which might be sustained.

A. That I can't say; I think if the collision was great enough to crush the side of the vessel in, I don't know as it would make any difference whether she was going slow or fast as long as she done the same amount of damage.

221 Q. Then your opinion as to the effect of a blow upon the side of a vessel opposite to that which is struck is based upon the character, extent, and manner of the blow upon the side which is struck, without regard to the speed of the colliding vessel?

A. Yes, sir.

Q. In this case of the Margaret Evans, have you any knowledge of the character of the blow, the place of the injury, and manner of the collision?

A. I have none except what I have learnt from what you have spoken of it here. I never examined her.

GEORGE W. ROOSEVELT, a witness produced and sworn on the part of the libellants, deposes and says:

I am a shipwright, caulker, and spar-maker. My firm is Roosevelt & Griffiths; we repaired the Margaret Evans after she was damaged by the Bridgeport; she was hit on the starboard side between the fore and main chains. I noticed the port side and found the port side started away from the water-way, so that I could run my finger in. She

221½ required refastening & recaulking in the port side.

Q. How was those repairs which you done to the Margaret Evans as to economy and fairness?

(Obj. to by claimant's counsel on the ground that the witness should be asked specifically as to the items of account & not generally. Res'd.)

A. The prices were the customary charges; I believe precisely the same as any one else who repair vessels.

Q. Look at the bill of Roosevent & Griffith, marked Exhibit No. 3,

and state whether or not the materials, labor, and services therein charged, are at the market rate at the time they were furnished?

A. I believe they are. I don't know, sir. The carpenters are charged $4 40, and I don't know whether there was any mistake or not. If we were paying them the same price that we were to caulkers, then that would be an error in favor of the ship. We have been paying for a year past $4 50, but charging $4 90 for both classes.

222 Cross-examined by Mr. Owen, counsel for claimants:

I have a general superintendence of all of our business; we have four or five foremen, but I have the general supervision of the working department. Both myself and Mr. Griffiths looked after the repairs to the Evans, more or less. I could not tell whether the blow to the Evans was upon her beam or between the beams.

Q. About how far apart were the beams of the Margaret Evans?

A. I couldn't tell; I presume the usual distance.

Question by the commissioners:

Q. Do I understand you to say that the copper was started on the opposite side from where the blow was struck?

A. No; but there was a space between the water-ways and the sides of the vessel opposite to the blow, where you could put your
223 finger in. I really don't remember much else injury on the port side, inside or outside, than what I have stated; I don't suppose on the outside she showed anything, but wanted recaulking. This space where I could put my finger in might have been 5 or 6, or 10, feet in length. I am not positive which.

Q. Have you any personal knowledge of the articles mentioned in the bill of Roosevelt & Griffith, Exhibit No. 3, actually went into the Margaret Evans?

A. I have personal knowledge that a large quantity of them did; nearly the whole of them; and I have every reason to believe that all went in.

Q. Look at the bill and state what items you have such positive knowledge of?

A. I have knowledge—it would be impossible for me to state what actual amount exactly of nails and timber went into a ship, but I am satisfied that we sent these articles to the ship, and that they
224 were used in and on her, although it would be impossible for me at this late day to charge my memory with it positively. I would not recollect the amount of hanging knees used for the repairing of this injury without looking at the bills. We were accustomed at that time, as a general thing, to do work by days' work. We scarcely ever do anything of that kind by contract as we can't tell where it will end. In my experience I think a damage to the side of a vessel by collision is easier to repair than to any other part of the vessel. It is straighter work. In such a case I don't know that it is easier to estimate the amount required to repair the damage. It is more costly to repair a vessel in other places; you can estimate 'most anything, but you would have to make allowance for damage which you couldn't see. I think I remember the Evans 10 or 12 years. I don't remember her
225 age exactly.

Adjourned to March 18th, 3 o'clock.

(Indorsed:) The Bridgeport. Testimony on reference.

226 *Libellants' testimony on rebuttal.*

U. S. district court, eastern district of New York.

GEORGE SHAW ET AL.
ag'st
THE STEAMER BRIDGEPORT, HER TACKLE, &C., &C.

APRIL 16TH, 1867.

JAMES EDMISTON, a witness produced and sworn on the part of the libellants, says:

I had an interview with Mr. Corlies, agent of the Bridgeport Steamboat Company, after the collision; about the day after the collision I first called on him. The collision happened on a Monday morning; I think the 4th of September. I first saw him the day after. I had gone down to see him before, but failed to see him. The captain of the ship & Mr. Griffiths was with me on that interview. Mr. Corlies was pointed out to me by a man who represented himself as his brother. He
227 told me Mr. Corlies was agent of the ship.

Q. Did you put any inquiry to him as to the repairs of the Margaret Evans?

(Obj. to by claimant's counsel, as counsel has not proved that the party with whom the conversation was had was Mr. Corlies, agent of the vessel. Overruled.—EX'N.)

A. I did.

Q. What did you say upon that subject?

(Same obj. as before. Overruled.—EX'N.)

A. I can't remember the exact words that passed between us. I asked him generally if he was going to do the repairs of the ship, or if we should go on with them. He refused to decide either way, or give any definite answer. He was then in treaty with a carpenter to do the repairs. I called upon him again upon that subject; I don't recollect positively the day; I think it was the 7th or 8th of September. It must have been two or three days subsequent to the first inter-
228 view. On reference to my letter-book I should say it must have been the 7th of Sept. He did not then give me any reply as to the repairs.

(Libellants now offer, after due notice to the other side, a letter dated Sept. 7th, 1865, addressed by D. D. Lord to The Bridgeport Steamboat Company, which is here marked Exhibit , a copy of which is to be produced. Claimants' counsel objects to production & admission of letter as immaterial.

Libellants' counsel also offers in evidence another letter addressed by libellants' counsel to claimants' counsel, dated 18th Sept., 1865, marked Exhibit , copy of which is to be produced. Claimants' counsel makes same objection as last above; and also, that the letter was written subsequent to filing the libel. Decision reserved.)

229 I don't recollect of but two interviews.

(Obj.)

Q. How long did you wait for his decision before commencing repairs on your own account?

(Obj. to by claimants' counsel. 1st, Mr. Corlies has not been identified by witness; 2d, immaterial.)

A. 11 or 12 days, until the 16th of Sept. Previous to making repairs I sent to three ship-carpenters for estimates. I sent those request for

estimates on the 14th of Sept.; that is their date. I received no estimates before the ship was placed on the dock and the repairs commenced. Mr. Poillon once showed me a paper containing an amount—I think it was merely a pencil memorandum—after the repairs had commenced. He never gave me any other statement than that. Neither myself or firm had any interest whatever in these bills of repair.

Q. Was any portion of the bills refunded to you?

(Obj. to as immaterial.)

230 Cross-examined by Mr. E. J. Owen, counsel for claimants:

The ship was docked on the 16th of Sept., and, I think, the repairs commenced immediately. She might have been docked on the evening of the 16th, and repairs commenced next day—on the 17th. I saw Mr. Poillon on the day the repairs commenced. I had written to him for an estimate.

Q. Have you a copy of the letter sent to Mr. Poillon?

A. Yes, sir.

(Witness produces letter, and the same is here marked Exhibit Copies to be furnished.)

That letter, I think, was delivered the same evening of its date. It was written in the afternoon.

Q. How is it that you applied to Mr. Poillon and one other firm for estimates, and not to Roosevelt & Griffith?

231 A. I did apply to Roosevelt & Griffith, and also to Webb & Bell, on the same date, and in the same words. Roosevelt & Griffith did not furnish me any estimate. I finally arranged on the 16th day of Sept. with Roosevelt and Griffith to do the repairs—the morning of the 16th. It might have been 3 or 4 hours after the vessel had begun to be stripped before I met Mr. Poillon. Roosevelt & Griffith stated to us that, from the nature of the accident, they could not well make an estimate, but they would do it as cheap as they could.

Q. Did not Mr. Poillon state to you the amount for which he would do the repairs, at the time you met him?

A. He stated the amount, about $4,000, and I told him it was a pity, as the repairs had already commenced.

Q. Didn't you tell him that you had decided to do the job by days' works?

232 A. I don't think I remember any such remark. Roosevelt & Griffith had been doing some patching to the ship for the capt. from the time the accident happened, and they had always done our work; and I told them they should have a fair chance for the job; but I didn't engage them until the vessel was docked, and then it was necessary that somebody should go to work on her, because the dockage was very heavy. I saw this person I called Mr. Corlies on the Bridgeport steamboat wharf, or the platform on the wharf facing the street. I had never seen him before to my knowledge. He came out of the agent's office on the wharf, and was pointed out to me as the agent. He was sent for the second time that we were waiting for him; and he was brought down by the messenger, or came down when the messenger was up for him—one or the other. At the time of the accident there was the capt., mate, boy, & cook & steward—don't know whether the latter was one person or two persons—on board the Margaret Evans.

233 That was all of the crew on board of her at that time that I recollect. I can't tell the aggregate amount of wages of those persons.

Re-direct resumed:

Mr. Poillon in showing me his memorandum did not come near me. I met him on the street just as I was going into White's copper store.

ROLAND W. GRIFFITHS, being recalled, says:

I recollect calling on Mr. Corlies with Mr. Edmiston. It was for the purpose of getting the job for repairs. I think I called upon him a half a dozen times with reference to this job.

Q. Did he ever tell you positively whether he did or did not mean to make the repairs himself?

(Obj. to by claimant's counsel; obj. as leading.)

A. He did not.

Q. Did he ever request you to examine the Margaret Evans that you recollect?

A. No, sir.

Q. Did you ever fix $3,000 as the amount for which you could do the repairs?

A. No, sir.

234 Q. Did you ever fix the amount of $3,500 as the amount for which you would do the repairs?

A. No, sir; I don't think I did.

Q. Could the repairs have been done for that price?

(Obj. to by claimant's counsel; answer subj. to obj.)

A. No, sir.

Q. Can you tell how many streak of plank you put outside, or how many clamp streaks inside, from the bill?

A. No, sir; I could not from the bill.

Q. How many days' labor did you charge in your bill for caulking and carpenter's work?

A. My bill containes a charge of 323 days' work for carpenters & caulkers. The remainder of the work charged in my bill is joiner work and foreman's time. The prices and materials charged in my bill were the current rates of the day. There is also a charge in the bill of shore labor. There was damage done to the port side of the ship.

Q. How did that damage show itself?

A. By *trunnels* being started, and her plank.

235 Q. Could any part of the work charged in your bill have been left out, if the Evans were to be made as good as before the accident?

(Obj. to by claimant's counsel; answer subj. to obj.)

A. No, sir. I did not refund any portion of the money I received on that bill to Mr. Edmiston, or to any person on his behalf.

Cross-examined by Mr. E. J. Owen, claimant's counsel:

There was no agreement between Mr. Edmiston and myself with regard to the repairs. Mr. Edmiston gave me no directions as to the work to be done on the Margaret Evans. When he employed me he told me to call a survey on the ship, to see what repairs were necessary to be done. That survey was held before we commenced making repairs. Mr. Edmiston did not limit me in any way as to the amount of repairs to be done. The only direction was to do nothing only

236 what the survey directed. I think we were engaged at other work at the same time we were doing repairs on the Margaret Evans. The bilge-plank about abreast of the foremast were the ones that were started. The *trunnels* were all started on the port side, about opposite the point of collision. The blow struck abaft of the foremast,

probably 12 or 15 feet between the beams. If it had struck on a beam it would have started the deck-frame on the opposite side. I saw Mr. Corlies, at his own request, at the several times mentioned. The first time I went down to see Mr. Corlies with the captain, at the captain's request, the capt. stated to him that the ship was in a sinking condition. Mr. Corlies told me to get a steam-pump to pump the ship out. I was a ship-carpenter, and Mr. Corlies wanted me to stop the leak. I did so. I next saw him in company with Mr. Edmiston. Mr.
237 Edmiston only accompanied me once.

Libellant's testimony on rebuttal here closed.

(Indorsed:)

C. L. BENEDICT.
C. L. BENEDICT.

238 U. S. district court, eastern district of New York.

THE STEAMER BRIDGEPORT
ads.
GEORGE SHAW & O'RS.

Exceptions, on the part of the claimants, to the report of Charles W. Newton, esqr., a United States commissioner in this cause, dated December 5, 1867.

First exception. That the said commissioner allowed to the libellants the sum of four hundred and thirteen dollars and twenty-five cents for charges of Alexander Lander, stevedore, whereas he should have disallowed the same.

Second exception. That the said commissioner allowed to the libellants the sum of fifty-two dollars and fifty-cents for charges of steamer "Adelia," whereas he should have disallowed and rejected the same.

Third exception. That the said commissioner allowed to the li-
239 bellants the sum of forty dollars for charges of steamer "Niagara," which ought to have been disallowed.

Fourth exception. That the said commissioner allowed to the libellants the sum of six thousand two hundred and thirty dollars and seventy-six cents for charges of Roosevelt and Griffiths, shipwrights, whereas he ought not to have allowed therefore a greater sum than twenty-five hundred dollars.

Fifth exception. That the said commissioners allowed to the libellants the sum of four hundred and nine dollars and sixty-five cents for charges of Ellery & McCarter for painting the ship, which ought not to have been allowed, nor any amount therefore exceeding two hundred dollars.

Sixth exception. That the said commissioner allowed to the libellants the sum of eleven thousand dollars and twelve cents for costs of repairs, which ought not to have been allowed, nor any amount therefor exceeding seven thousand dollars.

Seventh exception. That the said commissioner allowed to the libellants the sum of sixteen hundred and sixty-eight dollars and
240 thirty-four cents for interest on costs of repairs, viz., eleven thousand dollars and twelve cents, whereas such interest should not have exceeded the sum of nine hundred and eighty dollars, being the interest on seven thousand dollars, which should have been allowed for repairs, as stated in the sixth exception.

Eighth exception. That the said commissioners allowed to the libellants

the sum of seventeen hundred and thirty-four dollars for demurrage, whereas no demurrage should have been allowed.

Ninth exception. That the said commissioner allowed to the libellants the sum of fourteen thousand four hundred and two dollars and forty-six cents as due to them in the aggregate on the fifth day of December, the date of his report, whereas the same ought not to have exceeded seven thousand nine hundred and eighty-dollars.

OWEN, NASH & GRAY,
Proctors for Claimants.

241 (Indorsed:) U. S. district court, east'r. dist. of New York. The Steamer Bridgeport ads. George Shaw & o'rs. Exceptions to the report of commissioner. Owen, Nash & Gray, proctors for claimants. Filed December 31, 1867.

242 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Tuesday, the twenty-first day of April, in the year of our Lord one thousand eight hundred and 68.

Present, the Honorable Charles L. Benedict, district judge.

GEORGE SHAW AND DAVID SHAW
vs.
THE STEAMBOAT BRIDGEPORT, HER ENGINES, &C.

The report Charles W. Newton, U. S. commissioner, to whom, by the interlocutory decree of the court herein, it was referred to ascertain and report the damage sustained by the libellants by reason of the collision in the pleadings mentioned, having been filed, and also exceptions thereto on the part of the claimants, and the exceptions having been argued and submitted by the advocates of the respective parties herein:

Now, on motion of Daniel D. Lord, proctor for the libellants, it is ordered, adjudged, and decreed that the exceptions to the commissioner's report be, and the same are, hereby overruled, and that said report be, and the same is, hereby in all things confirmed.

And, on like motion, it is further ordered, adjudged, and decreed that the said libellants, George Shaw & David Shaw, do recover against the said steamboat "Bridgeport," her engines, &c., the sum of $14,402 47, the amount reported, with $380 86, interest thereon from the date of the report, together amounting to $14,783 33, with $840 35, costs as taxed, making in all the sum of fifteen thousand six hundred and twenty-three $\frac{68}{100}$ dollars, ($15,623 68,) damages and costs, and that the said steamboat "Bridgeport," her engines, &c., be condemned therefor.

243 And, on like motion, it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgement be, and the same is, hereby entered against Charles Weeks, Robert Haydock, the principals, and R. Cornell White & Water E. Lawton, the sureties on their bond, given on the discharge of the property arrested, for the sum of twenty-eight thousand six hundred and thirty-six dollars, ($28,636,) the amount of their said bond executed on discharge of the said steamboat Bridgeport from custody.

And, on like motion, it is further ordered that, unless an appeal be taken from this decree within the time limited and prescribed by the

rules of this court, that the libellants have execution to enforce satisfaction of this decree.

CHARLES L. BENEDICT.

(Indorsed:) Vol. ——, No. ——. United States district court for the eastern district of New York. George Shaw & David Shaw vs. The Steamboat Bridgeport, her engines, &c. Final decree. D. D. Lord, proctor for lib'l'ts. Filed and entered the 21st day of April, 1868.

244 U. S. district court, eastern district of New York.

THE STEAMBOAT BRIDGEPORT, HER ENGINES, &C., *ads.* GEORGE SHAW ET AL.

SIR: Take notice that the claimants intend to appeal from the final decree of the court in this case.

Dated New York, April 24, 1868.

Yours, &c.,

OWEN, NASH & GRAY,
Proctors for Cl't.

To S. T. JONES, Esq.,
Clerk U. S. District Court, Eastern Dist.

(Endorsed:) U. S. district court, eastern dist. of New York. The Steamboat "Bridgeport," her engines, &c., ads. George Shaw et al. Notice of appeal. Owen, Nash & Gray, pr's for cl't. To S. T. Jones, esqr., clerk U. S. dist. court, eastern dist.

245 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMBOAT BRIDGEPORT, HER ENGINES, tackle, apparel, &c., Charles Weeks, claimants and appellants, *vs.* GEORGE M. SHAW ET AL., LIBELLANTS.

To the honorable the circuit court of the United States for the eastern district of New York:

The petition and appeal of the above-named appellant sheweth—

That, on or about the twenty-fifth day of Oct., 1865, the above-named libellants filed their libel in the district court of the United States for the eastern district of New York against The Steamboat "Bridgeport," her engines, boilers, tackle, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, in which it is alleged, and praying as therein contained; to
246 which said libel the said petitioners refers for its contents.

That thereafter, on or about the 18th and 22d days of November, 1865, the said claimant, having executed the necessary stipulation for costs and value, did file his claim and answer, alleging, as therein contained, and insisting that the said steamboat "Bridgeport" was not liable for the damages claimed by said libellants, and praying that said district court would pronounce against said libel, and condemn the said libellants in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, this appellant asks leave to refer.

That, thereafter, the said cause came on to be tried and to be heard before the Honorable Charles L. Benedict, judge of said district court, on the 16th and 30th days of April, 1866, upon the allegations and proofs adduced by the respective parties; and said judge, having advised *theron*, on or about the 14th day of June, 1866, made a decretal order or sentence, bearing that date, that the libellants recover, in said action against The Steamboat "Bridgeport," her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with costs to be taxed, and that it be referred to a com-
247 missioner of said court to ascertain and compute the amount of such damages, and to report thereon to that court, as by reference to said decretal order will appear.

That after proceeding with such reference before Charles W. Newton esqr., one of said commissioners, he made his report to said court bearing date the 9th day of December, 1867, to which report exceptions were taken by this appellant, and thereafter, after argument on said exceptions, a final decree was made bearing date April 21st, 1868, overruling all of said exceptions and for the recovery of said libellants against said steamboat "Bridgeport," her engines, boilers, tackle, and furniture, of the sum of fifteen thousand six hundred and twenty-three dollars and sixty-eight cents, as will more fully appear by reference to said decree, to which reference is had for its contents; and this appellant is advised and insists that said decree is erroneous, inasmuch as the said libel should have been dismissed with costs, and for that, if said libellants were entitled to a decree for any damage, damages have been which should not have been allowed.

And this appellant, for these and for other reasons, appeals from the whole of said decree to the next circuit court to be held in
248 the said district, and on the said appeal he intends to seek a new decision on the facts, on the pleadings and proofs in the district court, and other proofs, to be adduced in the circuit court, and to pray different relief.

And he prays that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to the said circuit shall deem just, and the said appellees be condemned to pay to the appellant his costs and damages in the premises.

And this appellant will ever pray, &c.

Dated New York, April, 1868.

OWEN, NASH & GRAY,
Proctors for Appl't.
E. H. OWEN, *Advocate.*

(Endorsed:) U. S. circuit court, eastern district. The Steamboat Bridgeport, her engines, &c., Charles Weeks, claimants and appellant, vs. George Shaw et al., libellants. Petition of appeal. Owen, Nash & Gray, proctors for appellants. Filed May 12th, 1868.

249 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMBOAT "BRIDGEPORT," HER ENGINES, &c., Charles Weeks, claimants & appellant,
vs.
GEORGE SHAW ET AL., LIBELLANTS AND APPELLEES.
} Bond for costs.

Know all men by these presents that we, Charles Weeks & R. Cor-

nell White, are held and firmly bound unto the above-named George Shaw et al., in the sum of thirty-two thousand dollars, to be paid to the said George Shaw et al., for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the of April, in the year of our Lord, one thousand eight hundred and sixty-eight.

Whereas, the above-named Charles Weeks has prosecuted an appeal to the circuit court of the United States for the eastern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now therefore, the condition of this obligation is such, that if the above-named Charles Weeks, &c., shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES WEEKS,
By GEORGE W. CORLIES, *Agent.*
GEO. W. CORLIES.
R. CORNELL WHITE.
WALTER E. LAWTON.

Sealed and delivered, and taken and acknowledged, this 29 day of May, 1868, before me.

CHA'S W. NEWTON,
U. S. Comm'r.

250 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

R. Cornell White, affirmed, & Walter E. Lawton, being duly sworn, did each for himself depose and say that he resides in the eastern district of New York; that he is worth the sum of sixty-two thousand dollars over and above his just debts and liabilities.

R. CORNELL WHITE.
WALTER E. LAWTON.

Affirmed & sworn to this 29th day of April, A. D. 1868, before me.
CHA'S W. NEWTON,
U. S. Comm'r.

(Indorsed:) Vol. ——, page ——. U. S. circuit court. The S. B. Bridgeport ads. George Shaw et al. Bond for costs on appeal. ——— ———, proctor. Filed this 12th day of May, 1868.

251 C. & R. Poillon, ship-builders, shipwrights, caulkers, & spar-makers, 224 South street.

NEW YORK, *Sept.* 5, 1865.

Ship Margaret Evans:

4	timbers,	600 ft., @ 7c		42
20	streaks outside,	3,000 ft., @ 8c		240
2	clamp streaks,	500 "	"	40
4	ceiling	600 "	$6	36
3	streaks of water-way,	1,500 ft.,	$6	90
4	" deck plank,	300 "	"	18

6 deck-frame knees,		@ $8	48
2 clamp streaks,	600 ft.,	@ $8	48
4 streaks of ceiling,	700 "	@ 8c	56
6 8-inch knees		$12	72
7 12 " "		$18	416
Treenails, 1,000 26-in.,		@ $80	80
Caulking			300
Iron & spikes			200
			1,386
Labor 300 days, @ $4 00			1,200
			2,586
Dock hire			700
Joiners' work			500
Blacksmith			300
			4,086

(Indorsed:) Exhibit No 1 on the part of def't. Cha's W. Newton, U. S. com.

252 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, I, Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Jay L. Clark, to testify and the truth to say, on the part and behalf of the claimant & appellant in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the eastern district of New York, wherein The Steamboat Bridgeport, her engines, tackle, &c., Charles Weeks, is claimant & appellant against George Shaw et al., libellants and appellees.

And the said JAY L. CLARK, being about the age of forty six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Jay L. Clark, and he did thereupon depose, testify, and say as follows, viz:

I reside at Bridgeport, Connecticut; I was master and pilot of the Bridgeport at the time of the collision with the ship Margaret Evans. I was examined as a witness on the part of the claimant on the trial in

district court. I have heard my testimony read as set forth in the apostles.

253 1 q. When abreast of Houston st. and Grand St. Ferry, in what part of the river did you suppose your boat to be?

A. In the middle of the river, I believe; when we struck the fog we were in the middle of the river; after that we steered our course by the compass.

2 q. How soon after you passed Grand St. Ferry lights before you commenced to turn around the hook?

A. I could not say for certain as to the time; I supposed we had gone far enough to haul around the point of the hook; we could not tell how far we had run after we had passed Grand St. Ferry, only by my own judgment, but supposed we had gone far enough to clear the point of the hook?

3 q. Whereabouts in the channel was the boat when you supposed you had reached the point of the hook, and that it would do to commence to turn?

A. I could not tell in what part of the river she was in at that time.

254 4 q. I wish to know whether the boat was then in the middle of the channel, or on the New York shore, or on the Williamsburgh shore?

A. We could not tell whether we were in the middle of the river then, for the moment, or where we were.

5 q. Where did you suppose you were?

(Obj.)

A. We supposed we were near the point of the hook.

6 q. From the time you struck the fog and passed along the ferries you say you were in the middle of the river, and steered by compass. State whether or not you kept the boat straight along by compass until you commenced rounding?

A. We steered the boat by compass on her course—southwest-by-south; different compasses varies in different boats. After rounding the hook the true course is near east and west, by our compass; it was about west or west-half-south. I was at the wheel all the time; it was not moved at any time without my orders, and it was by my

255 order that the vessel began to turn. We did not commence to turn the boat when opposite Grand St. Ferry, nor until we had passed far enough to come to the point of the hook.

7 q. Did the light and bells of the Grand St. Ferry enable you to determine how far to run on after passing them before turning the point?

A. We had to go by judgement after passing those lights. We knew we were near the point of the hook.

8 q. Is the flood tide which runs from the point of the hook around the Grand St. Ferry regular in its course at all times, or does it vary; and if so, how?

A. The tide does not run regular there on the flood; sometimes it makes an eddy larger than at others. I could not tell how the tide ran on that night; it was dark, and there was no object by which I could tell; in coming around, if the tide sets in strong it has a tendency to cut the boat in towards the New York shore.

256 9 q. Did you take this uncertainty of tide into consideration in forming your judgement when it was proper to commence to turn around the hook?

A. We could not tell anything about the tide at that time. We knew it was strong flood; we could not tell whether the tide would cut us in

on the shore or off at that time. We had to use the best judgement we could at that point.

10 q. Did you so use your best judgement at that time?

A. I did.

Q. State whether or not it was prudent or proper for the ship to lay where she did without having a proper light to warn approaching vessels of her position?

A. My judgement would be if I had a vessel there I would have a light on it.

Cross-exam'd:

The greatest variation of our compass was on the east and west course. When we were running due east it would be pretty difficult for me to tell what the variation was. I don't know what it was on that course. I could not tell how our compass would point if we were running due east, whether it would point north or south of a due course. I don't think there was any variation when our compass was running due north or south. I think the compass was very correct on that course.

257

12 x-q. Do you know whether your boat had ever been swung to ascertain the deviation of your compass?

A. No, sir, I do not, nor have I ever seen a chart of the variations of our compass. I don't know how the Houston St. Ferry lights bore when I first made it out on the New York side. We lost the Houston Ferry light the moment after we saw it. It was then we ran into the fog. I had just passed that light when we lost it. I don't know what distance we were from that light, when we passed opposite to it. We were about in the middle of the river. I cannot give the distance in yards. When we lost the light I cannot say how far off we were from it by yards. I didn't notice how it bore from me when I lost it. I did notice the bearings of the Grand St. Ferry light when we first made it out by compass. The light bore a little ahead of us, off our starboard bow, when we first made it out. I cannot tell how many points it was off our starboard bow. I cannot tell how it bore from us when we lost it—not by compass—nor how many points off; there are 32 points in a compass. I didn't see any of the lights of the Grand St. Ferry until just as we passed it when it was abeam of us. The eddy at the point of the hook varies at the different points of the tide. I do not mean to say that the eddy varies in size at the same stage of the tides on different days. The eddy is not uniform when it is a quarter, half, or three-quarters flood, but it varies with the tide.

258

259

13 x-q. At the same stage of the tide does the eddy vary on different days?

A. That I couldn't tell.

14 x-q. Does the eddy increase or diminish in size with the progress of the tide?

A. What do you mean by the progress of the tide.

15 x-q. I mean does it increase or diminish as the flood tide grows older?

A. That eddy increases and decreases at any time of the flood tide. The eddy begins with the first of the flood. I can't tell whether it increases up to the first quarter; it may increase and diminish half a dozen times between the first and second quarter, and I should think also between the second and third quarter, and also between the third and fourth quarter. The eddy runs down or about east-by-south at all

times. I have seen it, I think, extend 200 feet into the river
260 from the dock off the point of the hook. I did not see the lights on the Williamsburgh side of the Grand St. Ferry after we got into the fog. I saw no lights on the Williamsburgh side after we got into the fog. Our true course after passing the Grand St. Ferry, by our compass, until we got to the hook, was southwest-by-south. I can't tell what that course would be by compass without variation. I think the tide was about half flood when we passed the Grand St. Ferry.

16 x-q. What is the greatest variation of that eddy at half flood?

A. The variation would be the same at half flood that it would be at any other state of the flood tide. It is difficult to tell, as it varies so often.

17 x-q. What is the greatest variation at any time?

A. I should say from 150 to 200 feet, as near as I could judge. I should say that the whole width of the eddy was from 150 feet,
261 or less, to 200 feet from the end of the dock, varying within those limits at different times of the flood tide. I don't mean to say that it is from 150 to 200 feet wider than at other times. The variation in the eddy there is about 50 feet.

JAY L. CLARK.

262 (Indorsed:) U. S. circuit court, eastern district. The Steamboat Bridgeport, her engines, &c., Charles Weeks, claimant & appellant, vs. George Shaw, libellant & appellee. Testimony of Captain Clark, taken on appeal. Owen, Nash & Gray, proc's for app'l'ts.

263 EXHIBIT.—*C. W. Newton, U. S. Com.*

45 EXCHANGE PLACE,
New York, 7 *Sept.*, 1865.

BRIDGEPORT STEAMBOAT CO., *Peck Slip:*

GENT'M: Mess. Edmiston Bro's, agents for the Margaret Evans, have requested me to call your attention to the claim of her owners for damages caused by collision with the "Bridgeport." As the ship is under charter it is quite important for her owners to avoid unnecessary delay in repairing her.

Her agents, therefore, request to be informed in the course of to-morrow, if possible, whether you intend to make good the damages sustained.

Very respectfully,

D. D. LORD.

GEORGE SHAW & AL.
vs.
THE BRIDGEPORT.

We consent that the foregoing be included in the return instead of the original.

21st Oct., 1870.

OWEN, NASH & GRAY,
Proc's for Cl'ts.

264 EXHIBIT.—*C. W. Newton.*

45 EXCHANGE PLACE, 18 *Sept.*, '65.

E. H. OWEN, Esq.

MY DEA' SIR: Can you give me any farther answer as to the claim by owners of the Marg't Evans.

They are proceeding with the repairs, & cannot yet ascertain what will be the expense; but they are very desirous of learning whether your clients will pay or resist.

Very truly, yours,

D. D. LORD.

GEORGE SHAW & AL.
vs.
THE BRIDGEPORT.

We consent that the foregoing be annexed, & made part of the return, instead of the original.

21st Oct., 1870.

OWEN, NASH & GRAY,
Proc's for Appellee.

265 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit, held at the court-house, in the city of Brooklyn, the 29th day of Aug., in the year of our Lord one thousand eight hundred and seventy:

Present, Hon. Lewis P. Woodruff, circuit judge.

THE STEAMBOAT "BRIDGEPORT," HER TACKLE, apparel, &c., Charles Weeks, claimant, appellant,
vs.
GEORGE SHAW AND DAVID SHAW, LIBELLANTS, appellees.

This cause having been heard on the pleadings and proofs, on the appeal of Charles Weeks, claimant, appellant, and owner of The Steamboat "Bridgeport," her engine, tackle, &c., from the final decree of the district court of the United States for the eastern district of New York, and having been argued by the advocates of the respective parties, and deliberation having been had in the premises, it is now, on mo-

266 tion of D. D. Lord, esq'r., proctor for libellants, appellees, ordered, adjudged, and decreed that the said final decree of the district court of the United States be, and the same hereby is, in all things affirmed, with costs to be taxed. "And it is farther ordered, adjudged, and decreed that the said libellants, appellees, George Shaw and David Shaw, recover against The Steamboat 'Bridgeport,' her engine, tackle, &c., or her said claimant, fifteen thousand six hundred and twenty-three dollars and sixty-eight cents, being the amount of damage by reason of the collision in the pleadings mentioned, and the costs of libellant in the said district court as taxed in said court, which it was adjudged by said final decree of said district court that the libellant recover against the said steamboat "Bridgeport," her engine, tackle, &c.

And it is further ordered, adjudged, and decreed that said libellant, appellees, recover against said steamboat Bridgeport, her engine, tackle, &c., or her said claimant, as damages sustained by him by reason of said

appeal of said claimant, the interest on the amount of said damages and costs, so adjudged by said decree of said district court from the date of said decree, viz., April 21, 1868, besides his costs on said appeal,
267 as taxed by the clerk, amounting together to the sum of one hundred and forty-two & $\frac{90}{100}$ dollars, ($142 90.)

All of which said damages, interest, and costs amount, in the aggregate, to the sum of eighteen thousand three hundred and forty-two $\frac{69}{100}$ dollars, ($18,342 69,) which it is hereby ordered, adjudged, and decreed that the said libellants, appellees, recover against the said steamboat Bridgeport or her said claimant. And it is *father* ordered, adjudged, and decreed that, unless an appeal be taken from this decree within the time allowed by law, a summary judgement therefor in favor of the said libellants, appellees, against The Steamboat Bridgeport, her engines, tackle, &c., her owners, claimants and appellants, and against George W. Corlies, R. Cornell White, and Walter E. Lawton, sureties on the bond given to perfect said appeal in the sum of thirty-two thousand dollars, the amount of their stipulation by them given on said appeal, and that the said libellants, appellees, have execution to satisfy this decree.

L. B. WOODRUFF,
Circuit Judge.

268 (Indorsed :) U. S. circuit court. The Steamboat Bridgeport vs. George Shaw & David Shaw. Decree. Filed & ent'd 29th Aug., 1870.

269 Circuit court of the United States for the eastern district of New York.

THE STEAMBOAT BRIDGEPORT, HER ENGINES, &c., Charles Weeks & Robert Haydock, claimants & app'l'ts,
ads.
GEORGE SHAW & DAVID SHAW, LIBELLANTS & appellees.

To the honorable the Supreme Court of the United States:

The appeal of Charles Weeks and Robert Haydock, the above-named claimants & appellants, respectfully shows that, on or about the 25th day of October, 1865, the above-named libellants, George Shaw and David Shaw, filed their libel in the district court of the United States for the eastern district of New York, against The Steamboat "Bridgeport," her engines, tackle, &c., in a cause civil & maritime, for the recovery of damages alleged to have been sustained by them to the
270 ship "Margaret Evans" by collision with the said steamboat Bridgeport, in the East River, in the port of New York, and that the said steamboat was seized upon process issued upon said libel, & was discharged on the claimants filing their claim & entering into stipulations for costs & value, and thereafter the claimants duly filed their answer to the libel of the libellants, and such proceedings were had in the said cause that, on the 21st day of April, eighteen hundred & sixty-eight, a final decree was made and pronounced therein by the said district court, wherein it was adjudged that the said libellants recover against The Steamboat Bridgeport, her engines, tackle, &c., the sum of fifteen thousand six hundred & twenty-three dollars & sixty-eight cents, including costs.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the eastern district of New York, & the said cause was removed thereby to the said cir-
271 cuit court, & there tried anew, & such proceedings were had in the said circuit court that, afterwards, on the twenty-ninth day of August, eighteen hundred and seventy, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, & that the stipulators cause their stipulations to be fulfilled, & that the libellants have execution against them.

And these appellants are advised & insist that said decree is erroneous, inasmuch as said libel should have been dismissed with costs, & for that, if said libellants were entitled to a decree for any damages, damages have been allowed which should not have been allowed.

Wherefore, these appellants appeal from the whole of said decree of said circuit court of the United States, & respectfully pray that the said decree of the circuit court & the libel, answer, pleadings, depositions, evidence, & proceedings in the said cause may be sent to
272 the Supreme Court of the United States without delay, & that the said Supreme Court will proceed to hear the said cause anew upon the evidence adduced, & such other evidence as may be produced on this appeal; & that the said decree of the circuit court, & every part thereof, may be reversed, & a decree made dismissing said libel, with costs; or such other decree made as to the said Supreme Ceurt shall seem just.

Dated New York, September 21st, 1870.

CHARLES WEEKS.
ROBERT HAYDOCK.

OWEN, NASH & GRAY, *Proctors for Appellants.*
E. H. OWEN, *Advocate.*

273 (Indorsed:) Circuit court of the United States for the eastern district of New York. Steamboat "Bridgeport," &c., Charles Weeks & al., claimants & appl'ts, ads. George Shaw & al., l'b'ts & appellees. Appeal to the Supreme Court. Owen, Nash & Gray, pro's for cl'ts & app'ts. D. D. Lord, esq., pro's for appellees. Filed Sept. 29, 1870.

274 By the Honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit, to George Shaw & David Shaw:

Whereas The Steamboat Bridgeport, her engine, tackle, &c., Charles Weeks and Robert Haydock, claimants, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of said George Shaw and David Shaw, against the said steamboat Bridgeport, her engines, tackle, &c., stating that the said decree is erroneous, in there petition of appeal alleged, and praying that the said cause may be heard anew, and that the said decree may be reversed; and the said Charles Weeks and Robert Haydock, having duly entered their said appeal to the Supreme Court of the United States, and filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court of the United

States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

275 Given under my hand at the city of Brooklyn, in the eastern district of New York, in the second circuit, the 29th day of September, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

CHARLES L. BENEDICT.

Due service of a copy of the within admit-*hand* this 29th day of Sept., 1870.

D. D. LORD, *for Appellees.*

(Indorsed:) U. S. Supreme Court. The Steamboat Bridgeport, her engine, tackle, &c., vs. George Shaw & al. Citation. Owen, Nash & Gray, proc. for app'l'ts. Filed Sept. 29th, 1870.

276 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMBOAT BRIDGEPORT, HER ENGINE, &c., George Weeks and Robert Haydock, claimants and appellants,
vs.
GEORGE SHAW AND DAVID SHAW.
} Bond for costs.

Know all men by these presents that we, R. Cornell White, of No. 164 Columbia street, in the city of Brooklyn; Norman Hubbard, of No. 242 Raymond st., in the city of Brooklyn; and George Whittaker, of No. 35 Lawrence st., in said city; are held and firmly bound unto the above-named George Shaw & David Shaw, appellees, in the sum of thirty-seven thousand dollars, to be paid to the said obligors, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the eastern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

R. CORNELL WHITE.
NORMAN HUBBARD.
GEORGE WHITTAKER.

Sealed and delivered, and taken and acknowledged, this 20th day of September, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

277 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

R. Cornell White, Norman Hubbard, & George Whittaker, being duly sworn, doth depose and say, and each for himself says, that he is worth the sum of thirty-seven thousand dollars over and above his just debts and liabilities.

R. CORNELL WHITE.
NORMAN HUBBARD.
GEORGE WHITTAKER.

Sworn to this 21st day of September, A. D. 1870, before me, as to Norman Hubbard & George Whittaker, & affirmed to this same day by R. Cornell White, before me.

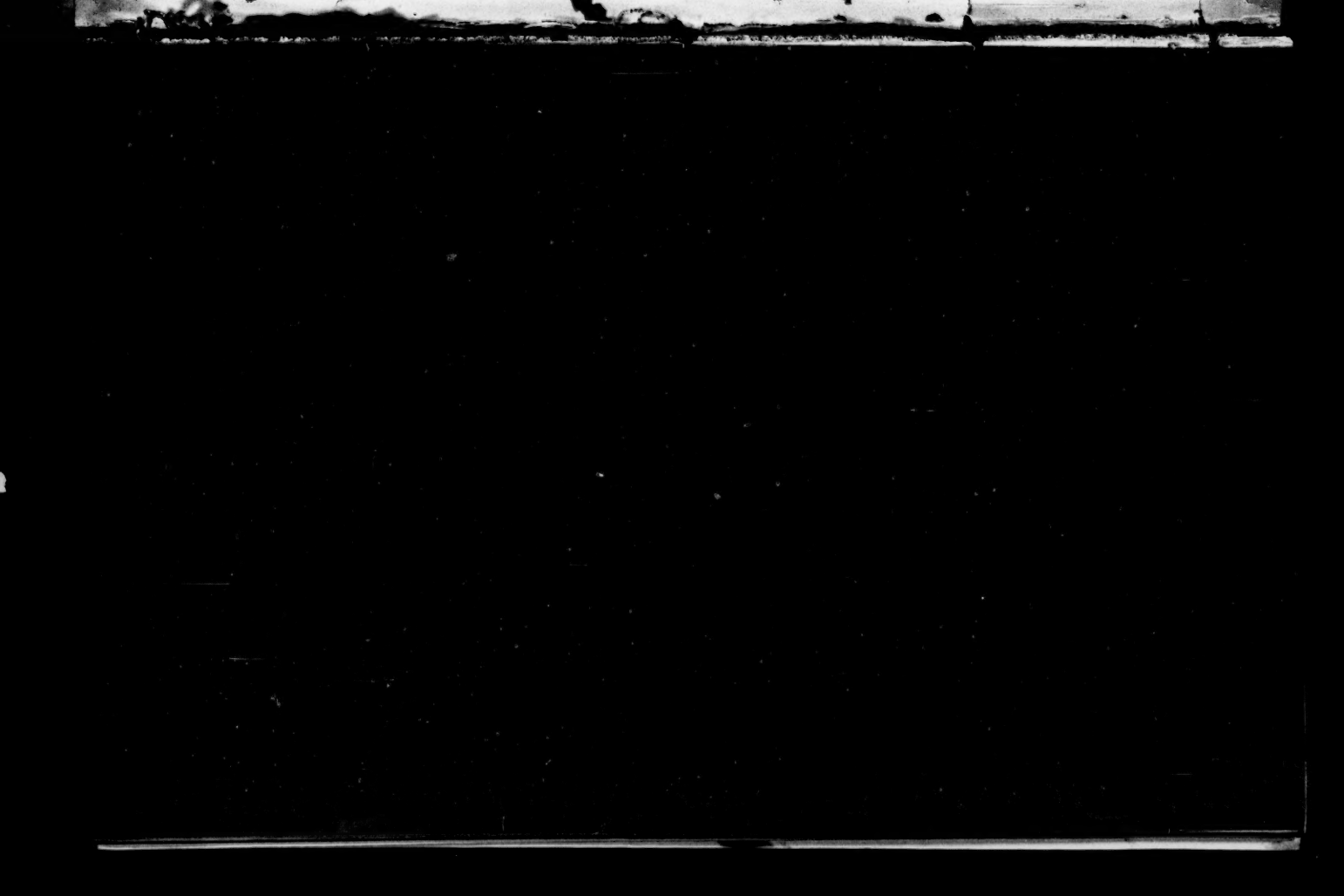
EDWARD L. OWEN,
U. S. Commissioner.

Approved Sept. 29, 1870.

CHA'S L. BENEDICT.

(Indorsed:) Vol. ——, page ——. U. S. circuit court. The Steamboat Bridgeport, her engine, &c., Charles Weeks and Robert Haydock, cl'm't's app'l'ts, vs. George Shaw and David Shaw. Bond for costs on ——. Owen, Nash & Gray, proctor for cl'm'ts & app'l'ts. Filed this 29th day of September, 1870.

(Indorsement on cover:) No. 281. E. New York, C. C. U. S. The Steamboat Bridgeport, her tackle, &c., Charles Weeks and Robert Haydock, claimants, appellants, vs. George Shaw and David Shaw. Filed 5th November, 1870.



Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

The Steamboat "Bridgeport," her Tackle, &c., Charles Weeks, and Robert Haydock, Claimants and Appellants,

vs.

George Shaw and David Shaw, Appellees.

This case comes up on an appeal from a decree of the Circuit Court for the Eastern District of New York, whereby the steamboat *Bridgeport* was condemned to pay the damages sustained by the ship *Margaret Evans*, from a collision with the steamboat.

Abstract of the Pleadings.

The libel states that the ship was lying, on the 4th of September, 1865, between one and four o'clock in the

morning, in the East river, moored to the wharf at Corlear's Hook, in the City of New York, and that while so lying there the steamboat *Bridgeport*, proceeding on her voyage from Bridgeport to Peck slip, New York, with a full head of steam, and going at full speed, through carelessness and mismanagement came with great violence against the ship, striking her on her starboard side, just abaft the forerigging, cutting her deck beams, &c., whereby she sustained damage amounting to $17,318, exclusive of interest. (*Fol.* 4.)

The answer admits the collision at the time and place, but denies that it was through any fault of the steamboat, but was occasioned by an inevitable accident, arising out of the steamboat being suddenly enveloped in a dense fog. (*Fol.* 22.)

The steamboat was engaged in running between New York and Bridgeport, transporting freight and passengers. At the time of the collision she was on one of her regular trips from Bridgeport to New York, with a cargo of freight and passengers, being well and sufficiently officered, manned and equipped, and her engines in good order and well and faithfully attended to. She had also a skillful and competent pilot, who, with one man, was in the pilot house at the wheel. She also had a competent and vigilant look-out stationed at her extreme forward end; the mate was standing there also, assisting in that duty. The steamboat had encountered some fog as she came down below Throg's Point, and by reason thereof had been running slow, but as she passed Blackwell's Island, the fog having lifted so that both shores could be seen, her speed was increased and she continued along until she had reached a point about abreast of Houston Street Ferry, when, unexpectedly and in an instant, she was enveloped in a fog so dense that a vessel could not be seen therein 100 feet, and the mate says not over ten feet. All the witnesses agree that the fog was unusually dense, that it rolled up towards the

steamboat; and was not visible until she ran into it and became totally enveloped therein. The engine was thereupon immediately shut off, and the boat slowed down as slow as possible and kept steerage way on her, and in that way she continued along in the middle of the river with the utmost care and watchfulness that could be exercised until the pilot supposed he had reached the point of Corlear's Hook, when the wheel was ported to round the same, and shortly thereafter the look-out reported a vessel ahead; whereupon the bells were rung to stop and back, and the same were answered as quickly as possible, but before any sternway could be got on the steamboat, she struck the ship, which was lying, not at a wharf at Corlear's Hook, as alleged in the libel, but at a slip at the foot of Corlear's street, which is several hundred feet below the Hook, at a pier entirely exposed, as hereafter stated.

The tide was about flood, and running in an opposite direction to that of the steamboat. There is no dispute that the steamboat was in her proper place, and on her correct course through the middle of the river, and between the lines or tracks of the ferry boats of the Houston street and Grand street ferries, running between New York and Williamsburg, when she met the fog bank and became enveloped therein. There is no safe or proper anchorage in the river at that place, nor below until after passing the Hook; and vessels do not anchor there because of the rocky bottom, and of the danger in attempting to do so. In addition to this, it would have been dangerous in the extreme to have anchored in and so near the pathway of those ferries; nor could the steamboat have been run into any of the ferry slips, for they were occupied, and there were no other piers or slips there which could have been found. It was therefore absolutely necessary to continue along on her course. The point of the Hook is at the corner of East street and Water street, which is only about 260 feet below the Grand Street Ferry—the Grand street and Williamsburg ferry, mentioned in the testimony, being one and the same ferry (*fol.* 66). Above

the Hook the course down is about *S. W. by S.*, while below it is *W.* ¼ *S.* (*fol.* 67), and therefore in navigating a steamboat down the river it is necessary to make a rank shear at the proper time and place by porting the wheel, otherwise she would be in danger of getting aground over on the Williamsburg shore. On this occasion, as the steamboat passed the Grand Street Ferry, the light of the ferry could be indistinctly seen, and the ferry bell heard, but it was not possible to determine from these when it was proper to commence turning around the Hook, which, as above stated, was only 260 feet below, and accordingly the pilot says, that after he passed that ferry, and when he supposed, from his best judgment, he had gone far enough, being in the middle of the river, he ordered the wheel to port, and the steamboat commenced rounding to, and in a short time thereafter the lookout reported the vessel ahead, the bells were immediately rung to stop and back, but before this could be done the steamboat struck the vessel, and did the injury complained of.

The ship was lying at the time at the side of the most easterly pier, with nothing but open water between her and the point of the Hook. She lay with her head up the pier, bringing her port side to the pier and her starboard side towards the steamboat. She had no light and there was no person on her deck. Even if this was not a fault on her part, yet it is a circumstance to be taken into consideration in deciding whether there was any fault or negligence on the part of the steamboat.

I.—The material facts are undisputed.

Judge Benedict, in his opinion, says: "It appears "that when the steamboat passed Blackwell's Island, "the fog, which had come on during the night, lifted, "so that both shores could be seen; but when she ar-

"rived off Houston Street Ferry, it suddenly shut "down upon her so thick that it was impossible to see "objects at any considerable distance. The speed of "the steamboat was at once slowed down to the "lowest point, and she proceeded on her voyage, the "bottom there being unfit for anchorage and the "place dangerous by reason of the ferries.

"As she proceeded, she had one chief mate, in ad- "dition to a regular look-out, stationed forward, and "her master was in the wheel house with the wheels- "man. Just after she passed Grand Street Ferry, the "look-out saw and reported a vessel ahead, when the "engine was instantly reversed, but before more than "one and a half turns back could be made, she "brought up square upon the starboard side of the "vessel ahead, which proved to be the *Margaret Evans*, "lying alongside of the pier as above described. The "look-out were competent persons and saw the vessel "at the earliest possible moment. The engine was in "good order and was reversed as soon as possible after "the ship was reported. The speed was as low as "she could run and have steerage way. The fog was "very thick, but the Grand Street Ferry light was "seen by the mates of the steamer as she passed the "ferry, and after that a light upon the New York "shore. The Grand street bells were also ringing."

(*Benedict Adm. R.*, 65.)

The District Court not only found no fault with the navigation of the boat, but seems to have considered that she was navigated with the utmost care, caution and maritime skill, except in reference to the points hereafter stated.

II.—But still the learned District Court held that from the testimony there was negligence on the part of the master, (1) in not *knowing* the proper

time and place when and where to round the point, (2) in commencing to turn when opposite Grand Street Ferry, which he should not have done until she had passed some 260 feet below the ferry, and (3) in drawing in too close to the New York shore. Neither of these faults was established by any competent evidence.

1. In reference to the first act of negligence, the Court say, that inasmuch as it appears from the testimony that the master saw and heard the Grand Street Ferry lights and bells, which were only 260 feet from the point of the Hook, he must have known thereby his position, and in the exercise of ordinary maritime skill ought to have passed the Hook in safety, and at the proper distance, and then he *infers* that inasmuch as this was not done the master did not exercise such ordinary maritime skill, and so it was not a case of inevitable accident.

(*a.*) No witness pretended to testify that there was any such want of care, caution, or maritime skill.

In drawing this inference, the learned Judge must have been erroneously influenced by a consideration of the facts and circumstances as they appeared to him *in the light of the event*, whereas the question should have been decided upon the facts and circumstances as they existed and as they appeared to the master at the time and place of the accident. His judgment as to the proper mode of navigating the boat had to be then and there formed, and no witness pretends to say that it was unwisely or improperly formed.

The course taken by the Court in this case, if adopted as a rule, would lead to speculation, and a determination, *in the light of the event*, of what

might or might not have been done. According to that, if it should appear, *after the event*, that a competent navigator, by reasonable care and skill, *could* have avoided the accident, then it was *not inevitable*. This opens the door for calling *experts* to testify as to what might or could have been done, and as to what the master might or should have known, and would be pure speculation, for without being present, and having a knowledge of all the facts and circumstances under which the master acted, no one could properly say that he did not act right, nor what he should or should not have done. (*The Constitution, Gilpen R.*, 579, 587; *Lawrence* vs. *Minturn*, 17 *How.*, 100, 110.)

(*b.*) It is further submitted, that the Court adopted a wrong inference in regard to the effect of the sound of the bell, and the lights, in furnishing him knowledge as to his whereabouts. These would enable him to know when he was abreast of, and had passed them, but there being no other object in view, they would not correctly indicate distance or time; and, therefore, while after passing Grand Street Ferry, the compass would enable the master to keep the boat along on a straight course in the middle of the river, until it became necessary to make the turn, yet neither that or the bells or lights of the Grand Street Ferry would or could have enabled him to tell how far or how long to run after passing the ferry before turning. There was nothing by which this could be determined, except the exercise of his mind and in the absence of any testimony showing, or tending to show, that he failed, under the circumstances, to exercise reasonable skill and judgment, he should not be considered guilty of negligence.

(c.) But this inference of the Court has been disproved by the pilot, in his testimony given after the appeal to the Circuit Court. He testified (and about which he was not interrogated in the District Court), that after passing the Grand Street Ferry, being still in the middle of the river, he continued along on the proper course, S. W. by S., until he *supposed he had passed the point of the Hook far enough to enable him safely to haul up on the new course, when he did so: that in doing this he exercised his best judgment* (*fol.* 253). Now, while the *event* shows that he did not proceed far enough, yet in itself, under the circumstances, that is not sufficient evidence of want of care, caution or maritime skill. It may be the tide caught the boat on her bow and cut her over, which, from the darkness and impenetrable fog in which they were enveloped, could not be known or avoided (*fol.* 255.) The presumptions are that the master exercised all ordinary care, caution and maritime skill, which cannot be overcome by inference from the light of the event.

2. As to the second act, which it is said was negligence, viz: that the master commenced to turn at Grand Street Ferry, and took a course which he supposed would carry him pretty close to the piers below the Hook.

(a.) The testimony upon which this conclusion is based is that of the wheelsman, *Edward Smith*, who says he stood on the starboard side of the forward wheel, and that Clark, the pilot and master was at its port side (*fol.* 80.) He says they saw the Grand Street Ferry lights, and hauled up to a course W. by a little south (*fol.* 82); that they judged they were pretty close in, but well enough off in the channel to

make their way safely. On cross-examination he was asked if they hauled up when they saw Grand Street Ferry lights, which he did not answer, except by saying that they commenced turning there. This is all he said upon that subject and upon which the Court found this fact of negligence. But the Court misunderstood this witness. The question misled him, for it is evident that he did not mean to say or to be understood as saying that they commenced turning at the ferry. This appears from his answer to a question put by the Court as to whether the boat was swinging at the time she struck, and he says she was, that they were right on the turn (*fol.* 92). Now as the ship lay some 7 or 800 feet below the *point* of the Hook, and the ferry 260 feet above, it is certain that they could not have commenced turning when opposite the ferry; for if they had, the boat would have struck the New York shore before she reached the point; moreover, the master, who was with him at the wheel, and who directed and controlled all his movements, says (*fol.* 255) that after passing Grand Street Ferry he ran on his course, in the middle of the river, until he supposed he had passed the Hook some distance, and far enough to continue down in the middle of the river, and that then he commenced to turn (*fol.* 63). This is no doubt the truth, and it shows that there was no such negligence or improper navigation as was found by the Court in this respect.

(*b.*) The mere fact, that the boat was out of her course, does not in and of itself show that she was hauled up too soon, for she may have been cut in by the tide, and thereby carried around faster than if she had merely swung upon her port wheel. Whether there was such a tide or

not was unknown. There might have been, and the pilot says he allowed for that by keeping along farther on the course, after passing the point, as he supposed and believed, before hauling up. (*Fol.* 255.) If he did not accomplish this he was not in fault under the circumstances. He exercised his best judgment upon the subject at the time, and this was all that could be required of him. Error in judgment was not a fault. (*The Grace Girdler*, 7 Wall. p. 201.)

III.—The Circuit Court fell into error in regard to the facts which seem to have had an influence upon its judgment (*see the case reported in* 7 *Blatch. R.*, 361.)

On p. 363 it is said: "The steamboat changed her course too soon, and at a point several hundred feet above the place where she ought to have changed, and that this mistake brought her directly towards the wharf and into the libellant's vessel." Now, the testimony shows, and so the District Court found, that it is only 260 feet from the Grand Street Ferry to the place where she ought to have changed, that when opposite the Grand Street Ferry she was in the middle of the river, and as already stated, that she kept along after passing that ferry until the pilot supposed he had passed the point.

On the same page it is said the steamboat maintained too high a speed, but the District Court decided that the steamboat had been slowed down and was running at the lowest possible speed, and so the witnesses testify. (1 *Benedict Rep.*, 67.)

On page 364, the Court say, in effect, that while the master saw the Grand Street Ferry light and heard her bell, yet he did not see the light or hear he bell on the Williamsburg shore, and therefore he must have known that the ferryboat was nearer

the New York shore; but the learned Judge did not observe the map, for if he had, he would have seen that the ferry slip on the Williamsburg side was above and not abreast of the Grand Street Ferry. The Grand Street and Houston Street ferries run to one slip on the Williamsburg side, which is a little above Houston street, and at least five streets above Grand street. The light on the New York shore spoken of was only seen a moment before the collision, and did not and could not aid the master in navigating the steamboat. It was supposed to be on the shore, and if it had been there the pilot reasoned correctly in turning when and as he did. The compass would not show *when* to begin to turn; there was nothing to said in determining that, except the judgment formed upon the idea that the boat had continued far enough on that course to turn. It was not *improper*.

IV.—The rule of law adopted by the District and Circuit Judges was erroneous, and caused them to form a wrong conclusion upon the facts.

1. The rule as laid down makes it incumbent upon the party setting up the defence of inevitable accident to show affirmatively that the collision could not have been avoided by the exercise of ordinary care, caution, and maritime skill; whereas the correct rule is, that if it happened, notwithstanding such care, &c., then it was inevitable. The former rule leads, as already said, to speculation. According to that rule, if it should appear from the testimony of experts *after, and in the light of the event*, that a competent navigator *could* have avoided it, then the accident was not inevitable; while the correct rule is, that if from the testimony it appears that the navigators exercised ordinary

care, caution, and maritime skill, then the *law* pronounces it inevitable. The fact to be tried is, whether or not such care and skill was properly exercised, and if so, and if the accident occurred notwithstanding, then the law declares it to have been inevitable.

2. The rule laid down is also erroneous, because it casts the burden on the claimants of proving in the first place, and in the light of the event, that the collision could not have been avoided, while in fact the burden of such proof does not rest upon them, until at least a *prima facie* case of negligence has been established by the libellants. Such a *prima facie* case was not made out by the mere fact that the ship, while lying at the dock on such a night, and under the circumstances, was run into by the steamboat *The Bolina*, 3 Notes, Cases, p. 208. The *Morning Light*, 2 Wall. R., 550. The *James Gray*, 21 How. R., 194.

There was no testimony going to show such a *prima facie* case, sufficient to shift the burden of proof. The ship was lying in *harm's way*, without a light or anchor-watch to warn approaching vessels of her position, and this fact should be considered in determining the question of negligence on the part of the steamboat.

V.—The facts and circumstances attending this collision show that it arose from an inevitable accident, within the meaning of the law upon that subject. The highest degree of caution and skill that could be used was not required to prevent the occurrence, to make the accident inevitable. It is enough if the caution and skill exercised be reasonable, under the circumstances.

(*The Grace Girdler*, 7 Wall., 196, 203; *The Morning Light*, 2 do., 550, 556; Staenback *vs.* Rae, 14

How., 532; *The John Adams*, 1 Clifford R., 404; *The Thornley*, 7 Jurist., 659.)

VI.—The decrees of the Courts below should be dismissed, and the libel reversed, with costs.

E. H. OWEN,
Counsel for Appellants.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

U. S. Supreme Court.

THE STEAMBOAT "BRIDGEPORT" and her Owners,
Appellants,
vs.
GEORGE SHAW and DAVID SHAW,
Appellees.

The collision for which this action is brought happened at half-past three in the morning of 4th September, 1866.

The *Margaret Evans*, of which the libellants were owners, was moored for discharge of her cargo, on the ~~north~~ East side of a pier in the East river, at the foot of Corlaers street, New York; her stem was in-shore, her stern outwards towards the stream, and her port side to the pier. The pier was over 400 feet long, and projected more than 30 feet beyond the stern of the ship, while at the end of it lay the gunboat *Mattawasca*, making a further projection of over 30 feet into the river, and, on the night of the accident, there was a light hung above her deck and near her stern.

This pier is about 800 feet west of a bend in the East river called the Point of the Hook, beyond which

the river runs nearly north and south, while on this side it runs somewhat south of west, about 260 feet north of the Hook is the ferry from Grand street, New York, to Williamsburg, and about one-third of a mile further above is the Houston Street Ferry, running to the same dock in Williamsburg.

On the night of the accident, the steamer left Bridgeport, Conn., at 12 M., on her usual trip to New York. She commonly reached her dock, which was at Peck Slip, three-quarters of a mile from Corlaers street, about 4 A. M. Her usual speed was 11 to 12 miles.

When she reached Blackwell's Island she met a fog, which compelled her to run slow for some time, but it lightened, and she resumed her ordinary rate until opposite Houston Street Ferry, when she was caught in another fog, during the continuance of which the accident happened.

When she entered the fog, she was on her proper course, about the middle of the river, with the lights visible on both sides.

When the lights were shut out she reduced her speed to some rate not given with much correctness, but both the captain and wheelsman admit it may have been four miles an hour.

There were piers all along the New York shore and good anchorage on the Williamsburg side, and the river was about a mile broad. The steamer made no attempt to get to a wharf, although there was no proof that she might not have found a berth at the end, or even inside of a pier; nor to reach an anchorage, but kept on her course at the speed mentioned.

When opposite Grand Street Ferry, both her captain and wheelsman admit that they heard the bell and saw the light, and knew that they were near the New York shore; they nevertheless began to make their turn towards the west, intending to sweep round the point of the Hook into the East river, but as the Grand Street Ferry is 260 feet north of this point, they began

their change of course so soon, that they ran into the *Margaret Evans* before they had finished it.

They struck the ship on the starboard side, near her fore-rigging, which shows them to have got about 200 feet inside of the gunboat lying at the end of the pier.

There was no irregularities of wind or tide to disturb the reckoning of the steamboat's course, and the only excuse offered in her behalf is that the pilot *thought he had got on far enough to enable him to turn and clear the ends of the piers of New York.*

The District Court made a decree condemning the steamboat; their decree was confirmed in the Circuit; from their last mentioned decree the appeal is taken to this Court.

POINTS.

I.—The *Margaret Evans,* at the time of the accident was moored at a pier intended for the purpose, and was unusually protected from danger by the extension of the pier beyond her, and by the gunboat, which lay at the end of it, with a light suspended above her deck. That she should be run into when in a position so far from any supposed possibility of danger necessarily implies negligence from which the colliding vessel cannot be exonerated without clear affirmative proof of circumstances showing that the occurrence was not owing to the want of good judgment and skillful navigation.

The John Adams and cases cited, 1 Cliff. R., 404.

That the steamboat undertook to run in a fog increases instead of mitigating the strictness with which the law requires proof of caution and skill.

The steamboat cannot be excused by testimony of the mere conclusion of her officers

that they could make the turn with safety, even if coupled with the statement that it was according to their best judgment. Judgment which is in fact so erroneous, as this must be admitted to have been, is presumed to be bad, and affords no protection against the consequences, without affirmative proof that it was justified by the circumcumstances developed at the time when it was formed.

No attempt was made to prove any circumstances to justify the judgment of the steamboat's officers nor to corroborate it by experts. If there were no evidence of circumstances that indicated its imprudence, the mere fact that the officers had formed such an opinion even if it were the result of their best judgment, would not exonerate the steamboat, and impose upon strangers the consequences of their mistake. No vessel could ever be held responsible for any collision, if the unsupported, uncorroborated statement of her master, that he used his best judgment, were to be admitted as a defence.

II.—At the time when the fog first shut down upon her, and up to the occurrence of the accident, the officers of the steamer had such indications as, with the exercise of very ordinary seamanship and judgment, would have enabled them to avoid the accident.

That it was possible to round this point in safety during a fog, however dense, may fairly be presumed, from the fact that it must have been done on many previous occasions.

And a pilot not capable of doing it was not a

suitable person to be in charge of a steamboat on such a route.

That this pilot undertook not only to round this point, but to enter his own dock at Peck slip, which is the most crowded part of the river, proves that the attempt was not beyond the reach of average skill, and the fact that he failed in the attempt without any circumstance justifying or explaining the failure might alone be relied upon to establish the steamer's responsibility.

But the libellants claim does not rest upon this inference alone. At the time when the fog arose the officers of the steamboat knew their position to be opposite Houston street, in the middle of the river; from this point they knew their course by compass to be S. W. by W., up to the point where they were to turn to the west. On such a night as this, they ought not to have attempted the turn until opposite the middle of the westerly course of the river, this was the only safe way to avoid the vessels fast to the piers on the other side of the Hook. The distance from Houston street to this place was known or should have been known to the pilot, and the rate at which he was going would enable him to ascertain, with all requisite accuracy, the time when he had reached it. The fog, in such circumstances, offered no excuse for ignorance or mistake as to the steamer's position or course, and the light and bell on the Grand Street Ferry, would have corrected any such errors if made. With all these means of arriving at a correct conclusion it is useless to attempt to excuse their mistake by the mere allegation that they supposed they were right.

III.—The steamer committed a gross fault in beginning

her turn around the Hook when abreast of Grand Street Ferry. She was bound to keep south far enough to clear not only the Hook, which was 260 feet south of the ferry, but also the piers projecting into the west course of the river, which extended more than 500 feet south of the line running west of the Hook. In order to do this she should have kept her southerly course for at least 1,000 feet south of the ferry before hauling up to the west.

It is clearly proved that she began her turn when opposite the ferry. Smith, who had the steamboat's wheel, and who was better qualified to speak as to her course than any one else on board, says (fol. 81) that he steered S. W. by S. until he saw the Grand Street Ferry lights, and then (fol. 82) hauled up to west a little south, and the collision happened in a minute and a half afterwards; that they saw a light on the New York shore and knew themselves to be close to it, but judged, nevertheless, they were far enough out to clear the slips. He says (fol. 92) that they were just on the turn and had not yet steadied when they struck the ship, and that the blow was straight, not glancing.

The captain (Clark) did not, in his first examination, made any statement either contradicting or conflicting with this testimony of the wheelsman, and although he was recalled in relation to it, he does not deny that the turn was begun opposite Grand Street Ferry, and he says expressly that the blow was struck before the turn was attempted (fols. 62, 63, 64, 65, 66 and 104).

There is no other witness who testifies as to the course.

The only attempt to gainsay this clear and positive testimony, is an allegation that Smith could not have intended to state that he began the turn opposite Grand street, because he says in another part that it was not entirely completed at the collision.

But if Smith did not mean what he states so clearly, what did he mean, and why was not his statement corrected by Capt. Clark, especially when recalled in relation to it? The steamer was bound to show when she began her turn. Her defence would be incomplete without it, and there is no testimony on the point except Smith's, which must be accepted as true.

The objection, however, is untenable, because there is no limit to the extent of a curve, except the extent of the river, and there is no reason why, in this case, a turn begun at Grand Street Ferry should not have extended even beyond Corlears street pier.

It is manifest that the turn must have begun at the place mentioned, because the steamer's own witnesses say that her change of course was from Southwest by South to West ½ South, consequently she could not have gone south of a line running due west of the point where she was at the collision. This line strikes so near to the point of the Hook that it is evident she could not have rounded that point in any supposable or even practicable curve, without beginning at least as far above it as the ferry.

To begin the turn at this point in the river was grossly imprudent from its bringing them so near to the New York shore. In fact it was manifest that it must run them into the first slip projecting beyond the Hook. Smith admits the hazardous proximity, and states nothing to justify or excuse it, except that in his judgment he thought they were far enough out, and the captain does not contradict him or offer any other justification.

IV.—The steamer was in fault also, for running at too great speed; she was bound so to reduce her speed as to keep it in her power to stop her way within the distance at which objects ahead were visible.

All her officers admit that her speed may have been four miles an hour, and at the collision, which was at half-past three o'clock, within three-quarters of a mile of her dock, which she ordinarily arrived at four, it is evident that she had lost no time by running slow after passing Houston street, especially if the time when she was running shut off past Blackwell's Island is taken into the calculation.

Four miles an hour is too fast for a night, justifying the description given by the steamer's witnesses.

But independently of this, her speed was clearly in violation of the well established rule above stated, because she was not able to make any appreciable check of her motion, or to make more than one turn and a half backwards after the *Evans* was reported, and before the accident.

There is no testimony whatever in any part of the case to justify the inference that she could not keep steerage way at a slower speed.

V.—The steamer was in fault for continuing her course in the fog if she could not do so without endangering other vessels, and especially one so far out of her course as the *Margaret Evans*.

The anchorage, if doubtful in the line of her course, was not impracticable for a steamer with her steam up, and in calm weather, and an anchorage for two hours would have brought her to daylight, when, even if the fog continued, which was not likely, the navigation would be comparatively safe.

But if she preferred not to risk an anchorage on the direct line of her course there was good anchorage at Williamsburg, and within easy reach.

The objection that it was unsafe to anchor in the line of ferries, if sustainable, would shut up all the East river, as every part of it is traversed by ferries.

In fact there would be no danger in this if the steam whistle were blown while she remained at anchor.

Without anchoring she could have protected herself by making fast to the end or side of some pier near Houston street. There is no testimony showing they were occupied, or that the difficulty of getting on to one would be so great as to enter her own dock at Peck Slip.

VI.—The appeal should be dismissed.

D. D. LORD,
For Liblts. Appellees.